SENATE—*Thursday, April 2, 1992*

(Legislative day of Thursday, March 26, 1992)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. Today's prayer to the God of our fathers will be offered by guest chaplain Rabbi Robert B. Slosberg, Congregation Adath Jeshurun, Louisville, KY.

Rabbi Slosberg, please.

PRAYER

Rabbi Robert B. Slosberg, Congregation Adath Jeshurun, Louisville, KY, offered the following prayer:

Almighty God, source of all blessing, as we begin a new day of deliberations in the Senate of the United States of America, we ask for Your blessing and guidance.

Bless the Senators of our country with good health and wisdom. May their leadership and commitment to public service be a source of pride to all Americans, bringing glory to our great Nation.

Imbue our Senators with an uncompromising quest for justice and righteousness. May their actions lead our Nation toward its goal of ending all hatred and bigotry and abolishing poverty.

May the decisions we make today deepen our loyalty and devotion to our country and its ideals. We pray You give us the courage and strength of conviction to fulfill the vision expressed by the prophet Micah:

He has told you O man, what is good, and what the Lord requires of you: Only to do justice and to love goodness and to walk humbly with your God; then will your name achieve wisdom.—Micah 6:8–9.

Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of the proceedings has been approved to date, and the time for the two leaders reserved for their use later in the day?

The PRESIDENT pro tempore. The Senator is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, there will be a period for morning business until 1:30 p.m. today. During the period for morning business, a number of Senators will be recognized for specific time periods pursuant to a previous order.

At 1:30 p.m. today, the Senate will resume consideration of H.R. 2507, the National Institutes of Health authorization bill. Consideration of that bill will be governed under the provisions of the unanimous-consent agreement reached on March 31, and printed at page 2 of the Senate Legislative Calendar. Under that agreement, there are a number of amendments listed which will be in order. Senators, therefore, should be alerted that following 1:30 p.m., when the Senate resumes consideration of the bill, rollcall votes are expected to occur with respect to at least some of those amendments and, of course, on final passage of the bill if that is reached today, as I hope it will be.

Mr. President, I yield the floor.

MORNING BUSINESS

The PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 1:30 p.m., with Senators permitted to speak therein, for not to exceed 5 minutes each.

The Senator from Mississippi [Mr. COCHRAN] is recognized for not to exceed 5 minutes.

CONGRESSIONAL CALL TO CONSCIENCE VIGIL

Mr. COCHRAN. Mr. President, while recent reforms in the former Soviet Union are encouraging, the world should not forget that some people there are still denied basic human freedoms. This is particularly true of many Jews, who suffer discrimination in housing, education, and employment, and are often denied permission to leave the country. We must continue to call attention to the plight of these people and to press for greater religious tolerance, freedom of travel, and fundamental human rights.

The annual Congressional Call to Conscience Vigil is one way we can do this. Since 1978, Members participating in the Vigil have made statements for the RECORD to heighten public awareness of cases of special need. I rise in this year's Call to Conscience to bring attention to the case of Andrei Beburishivilli of St. Petersburg.

Born in 1955, Andrei is an electronics engineer. Until September 1988, he was employed at the Radio Ministry's Leninist Scientific Industrial Amalgamation, a factory manufacturing electronic equipment for the military. When he first applied for a tourist visa in August 1990, he was denied on the basis of secrets supposedly learned when he worked at Leninist. He was again refused in February 1991.

Mr. President, Andrei Beburishivilli is still waiting for the opportunity to pursue his life outside Russia. We want him to know—and we want the Russian Government to know—that we are concerned about Andrei. We call his case to the conscience of free men and women everywhere, and we urge our Government to continue to seek effective means to persuade Russian authorities to relent in this situation and in similar cases.

DELTA STATE DOES IT AGAIN

Mr. COCHRAN. Mr. President, there is a women's basketball team in Mississippi which has traditionally won national championships, but it is not quite as famous as the division I teams that we are looking forward to seeing in the final four of the NCAA championships. The team I am referring to is the women's basketball team of Delta State University. Delta State University is located in Cleveland, MS, and they have won another national championship in division II of the NCAA. This university, the women's basketball team, has won the national title 3 out of the last 4 years, and this brings to six the number of national championships Delta State has won since 1973. This was a time when women's basketball was revived as an intercollegiate sport at Delta State.

At that time, the team was under the leadership of Coach Margaret Wade, whose lifetime of service to women's basketball, both as a player and as a coach, and her dedication to and mastery of the game led to the naming of the Wade Trophy, which is the women's basketball equivalent of football's Heisman Trophy. Under Coach Wade's leadership, Delta State won national championships in 1975, 1976, and 1977—a time when virtually all women's teams, regardless of the size of their schools, were in one league, the Association of Intercollegiate Athletics for Women [AIAW].

In 1983, several years after Coach Wade's retirement, Delta State graduate Lloyd Clark came to the school with a mission to rebuild the Delta State dynasty. He has done just that.

• 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

In the early 1980's, the NCAA had created women's basketball divisions similar to the men's, and Delta State was invited to compete in division I as an independent—not associated with a conference. In their 2 years in that division, Coach Clark led the Lady Statesmen to a 20–8 record in the 1983–84 season and a 19–7 record in the 1984–85 season.

Despite this success, Delta State decided that it would be in its best interest to change its affiliation to division II and join the Gulf South Conference, in which most of the university's athletic teams competed. In every year since then, the Lady Statesmen have made it to the NCAA postseason tournament, including five trips to the final four and three national championships.

Coach Clark's record in nine seasons at Delta State is a phenomenal 240–39. This .861 winning percentage—and .893 in division II—ranks him as the winningest active division II coach in the Nation. His division II teams have only once lost more than four games in a season, and that was in what he considered to be a rebuilding year, when they compiled a 23–7 record last year.

This year's 30–4 team won the national championship by defeating the team which was ranked No. 1 throughout the season and was last year's national champion—North Dakota State University. Even more impressive is the fact that Delta State won the championship in Bison Sports Arena in Fargo, ND—North Dakota State's home court.

The Lady Statesmen were led by center Leslie McKiernon, a 6-foot-3 junior from Grenada, MS. Leslie's 29 points were a career high for her, and included two free throws with 3.4 seconds left in the game. Those two points provided the margin of victory, with the final score 65–63.

I congratulate that team, the coaches, and the students who support that team enthusiastically. They reflect a great deal of credit on our State, and I commend them for their unique achievement.

Mr. President, I congratulate Delta State University and its Lady Statesmen basketball team on their tradition of success and on their sixth national championship.

The PRESIDENT pro tempore. Under the order, the Senator from South Dakota [Mr. DASCHLE] and the Senator from Pennsylvania [Mr. WOFFORD] are recognized to speak for up to a total of 45 minutes. The Senator is recognized.

Mr. DASCHLE. Mr. President, I ask unanimous consent that during the period for morning business today, Senator KERRY of Massachusetts be recognized to speak for up to 40 minutes.

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

(The remarks of Mr. DASCHLE and Mr. WOFFORD, pertaining to the introduction of S. 2513 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRASSLEY addressed the Chair.

The PRESIDENT pro tempore. Senator GRASSLEY is recognized for not to exceed 60 minutes

Mr. GRASSLEY. Mr. President, thank you very much. I want my colleagues to know that, for this hour, I will rise with some of my colleagues to discuss the need for the Nation's beleaguered civil justice system to be reformed and changed.

I am going to start out by yielding 5 minutes to Senator GARN, who is a cosponsor of the legislation I have introduced and ask him to start out the dialog.

The PRESIDENT pro tempore. The Senator from Utah [Mr. GARN] is recognized for 5 minutes.

REFORM IN OUR CIVIL JUSTICE SYSTEM

Mr. GARN. Mr. President, I rise today in support of S. 2180, the Access to Justice Act. This bill, a product of the President's Council on Competitiveness, chaired by the Vice President, will serve to reform our civil justice system in a rational and fair manner. S. 2180 will reduce the burden on the United States economy and on the State and Federal courts brought about by needless, frivolous, and very costly litigation.

Mr. President, there has been an explosion of this frivolous litigation across our country in recent years. The litigation, in the form of liability lawsuits, has resulted in exorbitant jury awards, far beyond the actual damages incurred. This is in great part due to the greed and selfishness of the Trial Lawyers Association, as well as of the damaged parties. Just find a sympathetic jury, and they are quite easy to find; the sky is the limit on monetary compensation to plaintiffs and, of course, the attorneys.

I wonder who these sympathetic juries think they are paying for these outrageous damage awards in liability lawsuits. We are, in the form of higher insurance premiums, an increased cost of consumer goods and services, and higher medical costs.

In many cases, the cost of staying in business, which in large part includes paying liability insurance, has proven to be so burdensome that some businesses have been driven into bankruptcy, or have simply closed their doors. This does not apply only to small businesses, but some large corporations as well.

Especially hard hit by liability lawsuits has been the general aviation industry. Twenty years ago, the United States dominated general aviation manufacturing throughout the world. In 1979, U.S. companies manufactured 17,000 piston-powered aircraft. In 1991, that figure was less than 500. From 17,000 to 500. In fact, the average age of Cessna's fleet is 23 years. Yet, in 1991, after Cessna quit, 6 years ago, they simply quit building piston engine aircraft. They said: "We cannot afford to do it anymore, so we stop."

They were the biggest manufacturer of general aviation aircraft in the world.

But, nevertheless, in 1991, Cessna paid more than $20 million to defend and settle product liability suits, even though they had not been manufacturing airplanes for 5 years. Couple that devastating impact on a viable industry which experienced a drop in sales from $1.5 billion in 1979 to practically nothing, with the jobs lost, which exceeds 50,000, and the economy is dealt a staggering blow. This impact is due to lawsuits which result in enormous jury awards, the majority of which are entirely needless.

Piper Aircraft Corp., in the midst of its second bankruptcy, is currently attempting to move its operations outside of the country, most likely to Canada. The main reason is to get out from under the product liability laws of this country, which can reach back 50 years to an aircraft's manufacturer and sue a company and force them to pay for damages even though the accident is due to pilot negligence. Our liability laws are not only driving some companies out of business, but they are literally driving business out of our country. Instead of liability lawsuits leading to improved product safety, which is an appropriate result, they are having a dramatic negative impact on industries and consumer services.

As a matter of fact flying all these old airplanes because of the lack of new ones being built and their lack of affordability adds to the safety problem and I would be very personal in an example.

I bought a single-engine four-place airplane in April of 1969. I paid $5,000 for the entire airplane and thought that was a lot of money. A year-and-a-half ago I decided that an airplane that was now more than 40 years old that I would restore, so I started restoring my own aircraft. I am doing most of the labor on it except the things that must be signed off by an FAA examiner.

I wonder if anybody would believe that what I am going to do with me saving tens of thousands of dollars providing labor to restore my own airplane that I owned free and clear since 1969 will cost me at least $60,000 because of product liability. Just think of that. I paid $5,300 for two gasoline tanks, $300 more than I paid for the entire airplane in 1969. Most of that ridiculous cost is due to product liability. Seventy-two dollars for a dipstick. Everyone knows what it is. It measures oil in the engine. On an airplane it cost $72, and I got it wholesale.

Mr. President, S. 2180 will address this issue of suing for excessive amounts of money. Under the provision on Federal diversity jurisdiction, if it cannot be shown that actual damages exceed $50,000, a case must be held in the State court of jurisdiction, rather than a Federal court. Actual damages will exclude amounts of damages for pain and suffering or mental anguish, punitive or exemplary damages, and attorney's fees or costs. This will drastically reduce the caseloads in Federal courts of these needless liability lawsuits. Certainly there are associations that will adamantly oppose this provision. There are those who benefit most from having their cases heard in Federal court. I feel this provision of S. 2180 is extremely critical. It will greatly deter the desire to sue for outrageous sums and will move these lawsuits to their proper arena, that of the State jurisdictional court.

One other provision which will serve to deter these outrageous lawsuits is the requirement that a written notice be made to the intended defendant 30 days prior to filing suit. This takes away the element of surprise, the leverage if you will, used by plaintiffs in the filing of lawsuits and in a situation where the threat of a lawsuit is presented in order for an individual or other entity to bring about a desired result. This is a very useful and important tool to impede outrageous lawsuits.

Mr. President, our system of civil justice is not perfect, but it has certainly served our citizens well throughout its history. It has, however, become overburdened with needless litigation which ties up the Federal courts unnecessarily and impedes the proper carriage of justice.

I feel we are fast approaching a crisis with the Federal court system in this country. S. 2180 takes a very necessary and timely step in the process of reforming our civil justice system before that crisis hits. I commend the Vice President for his leadership in this effort. I hope the Judiciary Committee will be expedient in their consideration of this legislation, so that the full Senate may have a chance to debate this issue and take the steps necessary to bring true reform to our civil justice system.

The PRESIDENT pro tempore. The time of the Senator has expired.

The Senator from Iowa.

Mr. GRASSLEY. I thank Senator GARN for his strong statements and support for this. I will now yield 5 minutes to the senior Senator from Missouri who also last year during the debate spoke out forcefully on this very issue and I commend him for his leadership.

The PRESIDENT pro tempore. The Senator from Missouri [Mr. DANFORTH] is yielded 5 minutes.

LITIGATION EXPLOSION

Mr. DANFORTH. Mr. President, most of us in traveling around our States hear repeatedly from constituents about the problems of the civil justice system in America, the so-called litigation explosion. While this issue is very much on the minds of our constituents, it has been languishing in Congress at the committee level for a decade or so.

Several times we have reported bills out of the Senate Commerce Committee dealing with product liability only to see them stalled on the floor of the Senate.

It is time to bring this issue to the floor of the Senate. It is time to bring this issue to the attention of our colleagues as it has been brought to the attention of our constituents.

The Senate Labor Committee has reported out what is known as the Equal Remedies Act which is a bill to lift the caps on damages for intentional discrimination against women, religions, minorities and the disabled in employment cases, and I think that when the Equal Remedies Act comes to the floor it should provide an opportunity for a significant debate on the issue of tort reform in the Senate.

Why did we put limitations on recoveries in the Civil Rights Act of 1991? The reason was the concern about the possibility of totally uncontrolled judgments. For example, in a State court case involving age discrimination, a woman named Elizabeth Layman recovered a jury award of $8.8 million and that turned out to be a comparative drop in the bucket because Janella Sue Morton recovered $20.3 million in a failure-to-promote sex discrimination case.

More generally the problem of litigation in America cuts across many different fields of the law.

Generally the number of civil suits in the United States tripled between 1960 and 1990. We have in the United States 30 times the number of lawsuits that they have in Japan. The United States has 70 percent of the world's lawyers. It is estimated that predatory litigation reduces the gross national product of the United States by 10 percent.

In the field of medicine there are whole counties in rural areas of my State where doctors will not deliver babies, 40 percent of the rural doctors in Missouri, the general and family practitioners, 40 percent of them will not deliver babies. This sometimes means that women who are pregnant have to travel perhaps an hour to get to a hospital where their baby can be delivered.

The system is not efficient for those who are injured. It has been called the lottery system. Sometimes people can hit the jackpot, sometimes they can wait around in the court system for 5 years or so and end up with nothing at all.

It is a system where more than half the cost of the system goes to pay legal expenses and does not go to compensate those who have been injured.

This really is an issue of competitiveness and it is an issue of fairness and it is an issue that a great number of Americans are concerned about. It is high time that it be brought to the floor of the Senate. I compliment the Senator from Iowa for providing this time on the floor this morning to discuss it and I look forward to the time when the Equal Remedies Act comes to the floor where we can offer amendments dealing with product liability, malpractice reform, controls on punitive damages and other reforms to the civil justice system.

Mr. GRASSLEY. Mr. President, I yield such time as he might consume to the Senator from Wyoming.

The PRESIDENT pro tempore. The Senator from Wyoming [Mr. WALLOP] is recognized for such time as he may require.

Mr. WALLOP. I thank the Chair and I thank the Senator from Iowa.

Before the Senator from Missouri leaves the floor let me just compliment him. One of the great frustrations of Americans is realizing that a court system exists theoretically for their protection and they find more often than not that only one side of that equation gets protected and often it is only the practitioner, that the injured party and the innocent party or defendant are both the victims of a system that rewards the practitioner at the expense of the parties. I compliment him.

My State has the same problem. We are reduced now to a small number of OB-GYN practitioners on the basis of their product liability. Their liability simply is unaffordable in Wyoming and that is not a protection to the citizen. That is an abuse of the citizen. So I thank the Senator for what he said.

RESOURCES LOST TO A JUDICIAL PROCESS

Mr. WALLOP. Mr. President, it is not often that I am an original cosponsor of judicial reform legislation. Yet as we enter the new global economy, the demand for America to become competitive has never been greater. The waste of human and natural resources lost to a judicial process that is inaccessible to some, too accessible to others and that is offensively expensive has become an American tragedy and a barrier to competitiveness.

While our adversarial judicial system works up to a point, S. 2180, the civil justice reform bill, is an attempt to cure the most flagrant abuses that are in the judicial system today.

Too often, the system provides incentives to litigate. Litigation then becomes its own multiplier and its product, Mr. President, is tremendous losses to America's economy in terms of jobs, goods, and services.

And, the average American citizen does not view the judicial process as a friendly advocate to right the wrongs, but rather a cynical system using fear

and mistrust to enrich the practitioners more than the public. It has become a tool for those who know how and can afford to use it and a hammer for those who cannot afford to travel to an end that is more expensive than the wrongful demands that started the journey. Settlements and false admissions of guilt, Mr. President, have become more than vindication.

As the country cries for an affordable and effective health care system, our judicial system serves to aggravate and impede both safety and innovation. Doctors, fearing malpractice suits, often simply cannot afford to prescribe what used to be prudent testing, for they fear that efficiency will be named omission by a skilled practitioner of law. So defensive medicine has become the rule and the norm to the great cost—the great cost—of Americans in need of health care. And so not only is the cost and failure of the judicial system applying its skills to the health care system borne by each and every one of us, but so, too, is the increasing rate in the insurance industry.

This country strives to be competitive in a global economy and today it still is. Yet mired in fear of the courts are technologies that will never see the light of day in America—that is, not until they are introduced into our economy by the Japanese or the French or the Germans or the Canadians. America's product liability suits—this is an incredible figure—have increased 758 percent from 1974 to 1985, while over the same period, injury rates in nearly all categories have steadily declined.

So, as a cosponsor of the civil justice bill, I urge the Senate to adopt relatively simple measures that will help to correct some of the problems. One measure, dealing with the continued clogging of the courts by prisoners writing appeals geared only to stall the system, would place a limitation on the continuance of that process.

Relief could be provided to overcrowded dockets by providing for Federal diversity in jurisdictions.

The action of mandating 30-day prior notice before filing a civil action in Federal court, could foster early resolutions—even avoidance of court action might be achieved.

Economic abuse by litigation is no different than abuse by any other means in an era when the world is rethinking its traditions and institutions to greet a new and highly competitive age; we, as Americans, are challenged to retool and hone the procedural infrastructure that has kept us always at the leading edge of the world's superpowers. Of course, we must provide protection of law to our people, but the breadth of that protection should be to the innocent as well as the injured. And today I think a case can be made that it is not.

A friend of mine is being sued for a wrongful dismissal from a business operated by this friend. Four hundred dollars is the maximum anybody could think could possibly be crafted out of this lawsuit, which is for $1 million-plus.

Mr. President, the lawyer knows the case is bad. The lawyer for the complainant knows the case is bad, but also knows that the cost of pursuing it to that conclusion is a great deal higher than the cost of settling it for some figure which will provide for the lawyers' fee.

Mr. President, that is an unfair system at work. This friend is being abused by the system. The choice to pursue vindication should not be so expensive that an admission of guilt when none exists is the only other alternative. And that is the case with the law system of America today.

Mr. President, I thank the Senator from Iowa and I yield the floor.

Mr. GRASSLEY. Mr. President, I thank the Senator from Wyoming.

I yield now such time as he might consume to the Senator from Wisconsin [Mr. KASTEN].

The PRESIDENT pro tempore. The Senator from Wisconsin [Mr. KASTEN] is recognized for such time as he may require under the time controlled by the Senator from Iowa [Mr. GRASSLEY].

IN SUPPORT OF THE PRODUCT LIABILITY FAIRNESS ACT

Mr. KASTEN. I thank the Senator from Iowa not only for yielding me the time but I thank him for his leadership in this overall effort which clearly, because of the interest and because of the number of people that have been participating, but also because the knowledge and interest of the executive branch and people all across this country are aware of how important this overall effort is and are aware of Senator GRASSLEY's leadership in this effort.

Mr. President, S. 640, the Product Liability Fairness Act, is currently on the calendar as order No. 321. It should be taken up by the Senate. This legislation is the same as that which was reported by the Senate Commerce Committee by a vote of 13 to 7, had a hearing before the Senate Judiciary Committee, and unfortunately was not acted upon before the last Congress adjourned.

I am joined by 39 of my colleagues, from both sides of the aisle, who have cosponsored S. 640 because they recognize the need for the reasonable, moderate reform of our product liability rules.

The effort to enact product liability reform has been one which the Senate Commerce Committee has considered since 1981. We will soon bring before the Senate a measure that is balanced, does not deprive injured victims of any causes of action, does not contain any limits, or caps, on damages, and has the cosponsorship of 40 Members of the Senate.

President Bush and his administration are strongly in support of this measure. The President again called for tort and product liability reform in his State of the Union Address this year. His Competitiveness Council, headed by Vice President QUAYLE, continues to make this issue its No. 1 priority. All of this is reflective of the concerns that large and small businesses alike have with our current system.

Our product liability reform measure is justified on several grounds. We have a system that is slow in compensating victims who deserve compensation, costly to all parties, and unpredictable due to the State by State patchwork we have today. Above all, we seek a system based on fairness.

Provisions of our bill would address the costs imposed on all parties by the current system. The transaction costs see the lawyers of both the plaintiff and the defendants taking in as much, or more, than the injured parties. Recent data collected by the National Machine Tool Builders Association indicates that in cases involving their members in 1989, only 17 percent of the moneys paid out went to claimants.

In other words, we are talking about 83 percent of the money involved here going for transaction costs, going for lawyers' fees. Now that simply is a crazy system—17 percent going to injured consumers, 83 percent going to lawyers.

However, it is important to note that our legislation would not reduce the costs by restricting the rights of persons to sue for damages, or by instituting caps on the amounts that could be recovered. There were understandable objections made by the organized consumer interests to these provisions in prior bills.

Rather, thanks to the establishment of some uniformity on certain matters, both parties should be able to better assess the nature of their cases, and even possibly take advantage of the expedited settlements or alternative dispute resolution systems in the bill. The uniformity we seek will make the assessment of risk easier, and thus help to stabilize the insurance market.

It is important to note that we have a national problem that deserves a moderate, Federal approach. Though the current rules have developed through the judicial activism of the various state courts, the time has come for Congress to recognize the burdens our current system is imposing on interstate commerce, U.S. competitiveness, and American innovation.

Let me briefly describe the major provisions of our product liability package which will reduce unnecessary legal costs, provide incentives for the manufacture of safe products, and provide more fairness to all concerned:

This measure establishes procedures designed to expedite the settlement of

product liability cases. The rules are based on rule 68 of the Federal Rules of Civil Procedure. This will help reduce the burgeoning and unnecessary legal costs that hamper the current system.

We encourage the States to make greater use of alternative dispute resolution procedures, to also help reduce the legal costs.

The product seller provision also addresses the unnecessary legal costs of the system. Today product sellers are brought into almost every case, and yet liability is imposed on them in less than 5 percent of the cases. Under our bill, sellers are only to be held liable for their own negligence, for failing to provide warnings from the manufacturer, for breaching an express warranty, or when the manufacturer is unavailable.

Legal costs are also saved by the provision dealing with the interaction between the product liability system and the workers compensation system. We have taken steps to help keep these two systems separate, and avoid the excessive and unnecessary lawsuits between manufacturers and employers.

We create incentives for safety. Our joint and several liability provision maintains joint and several liability for economic damages. We only eliminate joint and several liability for noneconomic damages such as pain and suffering. Thus, plaintiffs can recover their full economic losses from any defendant, but defendants would only be responsible for those portions of the noneconomic damages—such as pain and suffering—which they caused.

Our package also encourages safety by barring the claims of individuals who are the cause of their own injuries because they were intoxicated or under the influence of illicit drugs.

The cause of fairness is advanced by the extremely proplaintiff statute of limitations. The time begins to run upon the claimant's discovery of the harm and the cause of that harm. This is a more proplaintiff standard than most current State standards now in existence.

Fairness is also provided for in our statute of repose, which sets an outer time limit for liability at 25 years for capital goods, where the injury is covered by workers' compensation.

The punitive damages provision promotes fairness. We recognize the quasi-criminal aspect of these damages, which are intended to be awarded in egregious cases, not every case. Therefore we establish a national standard for their imposition and the burden of proof required. Thus, these damages are to be awarded where the claimant establishes by "clear and convincing" evidence that the harm evidenced a "conscious, flagrant indifference to the safety of those persons who may be harmed by the product." We have a burden of proof that falls between the normal civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The punitive aspect of the cases may be heard separately from the case in chief if the defendant so elects.

No one wants manufacturers to introduce unsafe products or keep them in the marketplace. However, it is equally abhorrent when the uncertainties of our product liability system were to prevent new, useful, and safer products from being brought to market. The cost to society of innovations never pursued, or improvements never made, is not obvious at first blush—but it is nevertheless a cost that hurts American consumers, manufacturers, and workers.

There has been some research indicating that perhaps the rapid expansion of product liability law, which the courts were pursuing in the past, has slowed somewhat. The courts themselves may be moving the judge-made law to a more reasonable position.

Professor Henderson, of Cornell Law School, who has been conducting this research, cautions:

> However, to conclude that this trend will resolve all of the serious inequities and legal conundrums that still exist would be a misuse of the data collected in the study. * * * The better, more efficient way to address some of the profound problems product liability law has caused our legal system and society is through thoughtful, sparing and modest legislation at the Federal level. * * * [S. 640] is a worthwhile attempt at some of the needed reforms.

It is our job to make this attempt a reality by enacting S. 640 soon so that the House, with 150 cosponsors on H.R. 3030, has time to act.

Another point was made in our hearings last year—that this is neither a proplaintiff, nor a prodefendant bill. And just because it is balanced between the rights of the parties, not favoring the plaintiffs, does not make S. 640 anticonsumer. The most anticonsumer effects which I have seen arise from the costs, inefficiencies and inequities of our present system.

The proponents of fair product liability reform recognize that this bill is not a panacea for all of the problems that have plagued our product liability system. It is, however, a sound, reasoned, and balanced piece of legislation that deserves to be enacted into law.

There are those who seem to want to impugn our motives in pursuing product liability reform. They assert that the basis for this legislation has changed over the years. In fact, what I have sought since 1981 are rules to assure product safety, to establish uniformity because of the interstate nature of the problem, and to reduce the costs borne by all Americans, not just manufacturers or sellers of products. There have been immediate concerns dealing with insurance, litigation and competitiveness—all growing out of a search for fairness.

Some witnesses before the Commerce Committee suggested that competitiveness was the new buzzword to justify reform. Anyone who researches or recalls the debates for some 10 years ago would also find the testimony of such parties as the American Textile Machinery Association and the National Machine Tool Builders Association concerned not only about their domestic situation, but also explaining their loss of international competitiveness as a result of American product liability laws that we have yet to reform.

We cannot have product liability insurance costs that are 20 to 50 times those of our competitors and remain viable. Product liability reform is not the only answer to our competitive predicament, but it is certainly one important element that we can address.

I am pleased that S. 640 has garnered more cosponsors than any of our previous efforts—40 at the present time—and has passed the Commerce Committee by a substantial 13 to 7 margin. In the last Congress, S. 1400, after one hearing in the Judiciary Committee, was returned to the Senate Calendar. I believe the majority of the Senate agrees with the 40 of us who are cosponsors of S. 640 that it is time to enact this reasoned and moderate product liability reform measure. I will work to assure that we will soon have the opportunity to vote on S. 640, as a bill, or as an amendment to another piece of legislation.

I believe we can move forward quickly on this legislation. I understand there are organized special interests opposed to us. But overall, I believe the vote we saw in the Commerce Committee, roughly 2 to 1, will be the vote we will see in the U.S. Senate—at least 2 to 1; maybe a little bit better.

The fact is, people across this country are recognizing the impact of product liability costs and the court reform inefficiencies are having on our society. As people recognize that impact, the Senate will act. I am hopeful the Senate can act this spring, and we will in fact have a balanced piece of legislation that is sound, that is reasoned, and that will be enacted into law.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I now defer to the Senator from Kentucky for whatever time he might need.

The PRESIDENT pro tempore. The Senator from Kentucky [Mr. MCCONNELL] is recognized for such time as he may consume from the time controlled by the Senator from Iowa [Mr. GRASSLEY].

TORT REFORM

Mr. MCCONNELL. Mr. President, a number of years ago I was chairman of the Courts Subcommittee of the Senate Committee on the Judiciary during the period of my party's majority here in the Senate. I had an opportunity during that period to preside over many

hearings on the subject of tort reform in all of its various component parts.

I believe it is accurate that this Senator, the Senator from Kentucky, is the only Senator who has offered tort reform amendments on the floor of the Senate in the last 6 years.

Unfortunately, we have come up considerably short in each instance. It seems to me it is time we got serious about the problem that afflicts our society.

Two months ago, I joined Senator GRASSLEY in introducing the administration's tort reform bill, the Access to Justice Act. It is, in my view, an important step in alleviating the litigation crisis in this country. It would cut what I like to call the lawyers tax. It is a tax cut that can stimulate economic growth, one tax cut that would not increase the deficit.

The lawyers tax is insidious and it is regressive; 95 percent of the cost of a childhood vaccine, one-third of the cost of a stepladder. It costs the United States $80 billion annually in direct litigation costs. It is estimated that the total cost to the United States is $300 billion, including costs incurred in efforts to avoid liability.

Mr. President, it is no wonder the United States has 70 percent of the world's lawyers. Last year, I introduced S. 1979, the Lawsuit Reform Act, a comprehensive tort reform bill, including a loser-pays provision and the abolishment of joint and several liability.

That bill complements the efforts of the Bush administration. The Vice President and the administration, in introducing the Access to Justice Act, have focus needed attention on the liability crisis which continues to hamper our economy, threaten volunteers, impede innovation, and make health care unaffordable for many Americans.

The studies are dramatic and significant. Let me mention just a couple.

A study commissioned by the Department of Commerce found that many foreign competitors have product liability insurance costs that are 20 to 50 times lower than American companies. A survey conducted by the conference board, representing 3,600 organizations in more than 50 nations, concluded that because of the liability concerns, 47 percent of U.S. manufacturers have withdrawn products from the market and 25 percent have discontinued some form of product research.

The University of Texas studied the lawyers tax and found it reduced the U.S. gross national product 10 percent below its potential during the last decade.

It reduced our GNP 10 percent below its potential because of excessive litigation.

There is also an interesting—and I must say somewhat amusing—study that refers to the trade deficit lawyers surplus. The University of Texas study illustrates this phenomenon, a startling finding that economic growth is inversely related to the number of lawyers.

At one end of the scale, with high economic growth, are countries such as Japan, Hong Kong, and Singapore. At the lower end of the growth are countries where lawyers account for nearly 5 percent of the white-collar workers: Chile, Uruguay, and the United States.

Japan, who some feel is conquering us economically—I question that, but some people are saying that—is certainly not doing it with lawyers. They are beating us with engineers and with scientists. Japan has 116 scientists and engineers for every lawyer—116 scientists and engineers for every lawyer. In the United States, there are five scientists and engineers for every lawyer.

U.S. scientists and engineers are having to load up on liability insurance to protect themselves from our lawyers.

Another commonsense provision of the bill Senator GRASSLEY has introduced is the loser pays concept. It is a commonsense law found in virtually all European countries. America is the only major country that denies to the winner of a lawsuit the right to collect legal feels from the loser. As you can imagine, that certainly makes it a no-risk undertaking to file a lawsuit. Plaintiff simply incurs no risk. Societies that employ loser pays do not have nearly as much litigation as we do. They do not have the litigation craze; they do not have this overlay, this carrying cost, if you will, for the civil justice system, that we have.

A final point deals with the plaintiffs themselves. Do they win under the current system? Clearly not. Plaintiffs receive only 34 percent of the total judgments and awards under the current system here in our country. Lawyers and courts get the majority of the money. This system does not serve plaintiffs, defendants, or consumers. It serves the lawyers.

Self-proclaimed consumer advocates have based much of their opposition to tort reform on a misguided and unproven contention that lawsuits make the country safer. There is evidence they are wrong, that the liability craze is actually making our county less safe.

Early this year a team of scientists, engineers, physicians, and lawyers examined the impact of U.S. liability laws on safety and innovation. Their report, "The Liability Maze," was issued by the Brookings Institution. The report found little statistical evidence that lawsuits had actually led to the development of safer products. In fact, it said, we may be less safe.

Most pharmaceutical firms have stopped making vaccines because of liability. Of 13 American companies that were working on contraceptive devices 20 years ago, now only 1 takes the liability risk. Some companies have even stopped AIDS research because of the liability risk.

Clearly, important and significant change is needed, and needed now. So I commend my friend from Iowa for his leadership on this most important issue, and thank him for his efforts.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank Senator MCCONNELL because for a long period of time—even a long time before I got involved in this issue—he sponsored legislation in this area, and I want to recognize his leadership in that area.

Mr. President, I now defer to the Senator from Alaska for such time as he might need out of my time.

The PRESIDENT pro tempore. The Senator from Alaska [Mr. MURKOWSKI] is recognized for such time as he may require.

CIVIL JUSTICE REFORM

Mr. MURKOWSKI. I thank the Chair and wish the President pro tempore a good morning. I want to thank my colleague from Iowa, who is the floor manager.

Mr. President, I rise today in support of Senate bill 2180, which is the Access to Justice Act. This legislation, introduced by the distinguished Senator from Iowa and my good friend, Senator GRASSLEY, is, as has been pointed out by previous speakers this morning, an important step in an effort to bring about much-needed reforms in our Nation's civil justice system.

The bill contains many important provisions, including the concept of loser pays, which would require the losing party of any civil action covered by this bill to pay the attorneys fees and costs of the prevailing party.

I think this provision, Mr. President, would go a long way toward discouraging frivolous and meritless lawsuits which we see so often in our society today. The bill also provides for a change in the amount in controversy that must be alleged to obtain diversity jurisdiction in Federal court. Plaintiffs would have to claim actual damages of $50,000, not just noneconomic "pie in the sky," so to speak, damages for such as things as mental anguish, pain, and suffering. This should bring back more lawsuits into the State courts easing our overburdened Federal court system. The bill would help ease the gridlock and speed the resolution of cases in our civil justice system by providing for more efficient case management in Federal courts and encouraging the avoidance of unnecessary litigation through the use of alternative dispute resolution.

Mr. President, I would also like to commend the reforms included in Senate bill 2180 which, as we will recall, were initially recommended by Vice President QUAYLE through his chairmanship of the Council on Competi-

tiveness. I think the Vice President is to be commended for his efforts to highlight the anticompetitive costs associated with our civil justice system and to propose changes to a system where lawsuits thrive and grow unchecked, a system where these skyrocketing costs of liability insurance drive businesses from the marketplace and threaten to strangle our Nation's economic vitality.

I also must applaud the Vice President's willingness to meet the legal community head on, speaking to the American Bar Association about the need for the legal profession to face up to its share of responsibilities for the litigation explosion which we have seen in our Nation.

Hopefully, his remarks spurred an introspective look at the true cost of this litigation to society not only in terms of dollars but also the attendant impact escalating damage awards and liability insurance premiums have on the substantial effort, from the standpoint of the small business, to live under such a demand.

The negative impact of this litigious behavior clouds the prospects for development of new and innovative technology in many industries and erodes our ability to compete in others. We have all seen this from the standpoint of our foreign neighbors as they move out free of such haze of litigation over advancements in technology.

Industries such as those associated with the manufacture of general aviation aircraft and parts should not disappear from the United States solely because of outrageous damage awards and astronomical liability insurance, which is the case today. We cannot continue to allow the manipulation of the civil justice system to hamstring our ability to succeed in what is already a fiercely competitive global market.

Mr. President, let me speak briefly about aviation liability. It is very important to my State of Alaska because it has almost precluded the ability to have a U.S. manufacturer of single-engine aircraft, so important in the bush parts of Alaska.

For several years, I have worked with Senator KASSEBAUM, from Kansas, to address these problems as they pertain to the general aviation industry. I continue to support the enactment of her legislation, the General Aviation Accident Liability Standards Act. As I pointed out, the escalating cost of liability insurance has had a significant impact on the general aviation industry. We have seen astronomical damage awards translated into higher liability insurance premiums over and over again. Given no choice but to pass these costs on to their customers, businesses have seen a subsequent increase in the cost of small aircraft prices that move consumers right out of the market.

The Senator from Kansas has attempted to address this problem by injecting a sense of realism into the debate over general aviation accident liability standards by providing uniform liability standards in this industry. We hope to bring out some consistency in the court judgments which have led to instability and unpredictability in the industry.

The health of the general aviation industry is very significant, as I have indicated, in my area because many of the consumers impacted are my constituents, and general aviation is significant in my State where planes are almost more prevalent in some areas than cars on the beltway in Washington. It is not unusual in Alaska to come across planes still active in general aviation that are 40 or even 50 years old which have been repaired with parts that have been cannibalized from other aircraft. One of the dominant aircraft in the Alaska bush is the Grumman Goose which is at least now 50 years old and declining simply because of the unreality of obtaining parts. The point is there is no current replacement aircraft being made in the United States as a consequence of liability.

Alaskans are uniquely dependent upon this general aviation for their way of life, and in the communities on the Aleutian chain to the North Slope, Alaskans depend on small aircraft for the basic necessities of life. Mail, foodstuffs, equipment are all transported by small aircraft through rural communities that have no access to a road system. Many communities have minimal or no health care facilities. Residents must depend on general aviation aircraft to transport them to facilities in larger cities—Anchorage, Fairbanks, Juneau, Ketchikan, so forth.

The importance of general aviation in Alaska cannot be underestimated. We have one of the highest percentage per capita of pilots in the entire United States with approximately 13,000 pilots in the State with a population of about 550,000. Merrifield, in Anchorage, is one of the busiest airfields in the world servicing small aircraft. Hard flying conditions in Alaska place difficult demands on equipment and pilots.

Mr. President, I would not support the efforts of the Vice President and many Senators to cap damage awards or discourage frivolous lawsuits if I believed that it would protect the interests of manufacturers at the expense—at the expense, Mr. President—of safety of my constituents.

The reforms of the civil justice system recommended by the Council on Competitiveness and those contained in Senate bill 2180 will protect the rights of consumers as well as those of business. Reforms that would inject realism into the damage awards, for example, would protect the ability of Alaskan consumers to purchase new aircraft and obtain liability insurance at reasonable rates. It would also protect their ability to choose to purchase American-made aircraft and parts.

Mr. President, virtually no single engine aircraft are manufactured in the United States, as I have said today. More reasonable liability insurance costs may lure back into the marketplace those manufacturers and suppliers who are forced to curtail production and get out of the aviation business altogether.

The problems of the general aviation industry are not by any means unique, as has been pointed out this morning. We must take control of our civil justice system rather than let the system drive businesses from the marketplace. We must realistically balance and protect the interests of both plaintiff and defendant. Our goal must be to greatly reduce the burdens of excessive, needless litigation while protecting and enhancing every American's ability to vindicate their legal rights through our system of justice.

I think it is unfortunate, Mr. President, that we should have to consider buying our aircraft now from South America or Poland when we want light, single-engine aircraft, when the reality of course is to stimulate our economy and stimulate jobs. Instead, what we are stimulating is a full employment act for lawyers in this Nation.

I believe the recommendations of the Vice President and legislation introduced by the Senator from Iowa and other Members of the Senate represent reforms which will help us to achieve that goal.

Mr. GRASSLEY. Mr. President, obviously, I appreciate very much the support of so many of my colleagues who have come to speak on this issue and their addressing the subject so eloquently. I hope it impresses on this body and the people of this country that we have a real problem with which we have to deal, and I think this legislation deals very effectively with it.

No one can dispute the immense economic and social costs that our evolving culture of litigation imposes upon our society. The Washington Post recently noted this and says it very well. I would like to quote:

> The United States is the most litigious society in the known universe. In 1989, nearly 18 million new civil suits were filed in American courts—one for every ten American adults. The number of Federal lawsuits has nearly tripled in the past three decades, rising from less than 90,000 in 1960 to more than 250,000 in 1990. Standing by, ready and eager to help Americans bludgeon each other with lawsuits, are nearly 800,000 lawyers, 70 percent of the world's total, 1 for every 310 regular people in the United States.

I think that says it very well, that the costs of the American approach to dispute resolution are very staggering.

One recent report estimates that individuals, businesses and governments

spend more than $80 billion a year on direct litigation costs and higher insurance premiums and as much as $300 billion a year on indirect costs connected with those lawsuits. That is more than 5 percent of our gross national product.

The average lawyer then would drain $1 million a year from the country's output of goods and services, according to a study done by the University of Texas.

The costs, of course, are not only economic; they are also social, and they are emotional. The culture of litigation erodes the relationships of trust that are the foundation of our society such as the relationships between doctor and patient, between seller and purchaser, and even between husband and wife. The fear of getting sued discourages people, discourages businesses from engaging in all sorts of socially desirable conduct such as employing innovative medical procedures or designing and producing useful new products.

Other nations manage to resolve disputes in their society without incurring such costs, so why in the United States, in our country, do we spend five times as much as our major industrial competitors do on personal injury lawsuits as a share of the economy? Product liability costs are 15 times higher in the United States than in Japan, and have been on average 20 times higher in the United States than in Europe.

The President's Council on Competitiveness has proposed a package of reforms to restore reason and efficiency to our beleaguered system of civil justice. The package includes three main elements: reform of Federal law, which I have introduced in the Senate as S. 2180, and that is called the Access to Justice Act; and then, second, reforms of the Federal Rules of Civil Procedure; and, third, suggested reforms for State laws.

Perhaps the most widely discussed element of the bill I have introduced, the Access to Justice Act, is the implementation of what we call the fairness rule under which the losing party in lawsuits would be required to pay his opponent's legal fees.

Now, this is hardly a revolutionary idea. So far as I know, the United States is the only civilized country which denies the winner of a lawsuit reimbursement for the cost of collecting judgment, and that being reasonable attorney's fees. Providing such reimbursement is necessary if we are to adhere to a basic principle that a party that suffers damages at the hands of another should be made whole. It is also necessary to deter the meritless lawsuits that have flooded our courts, although as one leading commentator notes, the notion of awarding attorney's fees to prevailing opponents is not enough, or is enough to trigger anxiety attacks in many American litigators.

The approach by the Access to Justice Act is rather restrained. It imposes the fairness rule only in diversity cases between the citizens of different States, not in cases under Federal statute or not in constitutional cases. For the proponents of the federalization of civil law, this deterrent to meritless cases should be an attractive alternative to the elimination of diversity which has been proposed by many.

Fee shifting is hardly a new idea in Federal law. Many Federal statutes already—such as the civil rights laws and the antitrust laws—allow recovery of fees by prevailing plaintiffs, if not defendants. There is a safeguard in our modest fairness rule contained in S. 2180. That is that the loser would never be required to pay an amount more than his or her own attorney's fees.

The Access To Justice Act also creates a multidoor courthouse to provide litigants with a very wide range of alternative dispute resolution options.

The parties to Federal litigation would be required to attend a pretrial conference in which the areas of conflict are identified and the parties are given the opportunity to resolve their claims through a variety of alternative dispute resolution mechanisms, including early neutral evaluations, mediation, arbitration, minitrials, and summary jury trials. Any one of these alternatives is likely to be quicker, cheaper, even more reliable, and particularly less stressful on the parties than lengthy and expensive court trials.

Early resolutions of disputes would be furthered as well by the requirements of S. 2180 that parties in Federal litigation give their opponents 30 days' advance notice of their intention to sue. It is already common practice for attorneys to issue such letters prior to their filings.

S. 2180 provides long-needed relief to the Federal docket by imposing a requirement that prisoners bringing Federal civil rights claims exhaust their administrative remedies before filing in the District court.

Such cases constitute 10 percent of the Federal dockets in 1988, even though many of the cases are frivolous efforts to harass prison officials or even delay sentencing.

This reform was suggested by the Federal Court Study Committee in 1990, and I am pleased to report that it is included in another bill now pending in the Judiciary Committee, S. 1569. I had the good fortune, Mr. President, of being appointed to that Federal Court Study Committee.

The goal of the Access To Justice Act is not to eliminate meritorious lawsuits. It is to reduce instead the cost of litigation by discouraging baseless suits, and by encouraging less expensive and more expeditious resolution of those suits. The result then, Mr. President, should be more justice, not less justice as some might claim.

The reforms proposal in S. 2180 are to be supplemented by the proposals of the Council on Competitiveness for reform of the Federal rules and also suggested reforms of State law. The Council proposes changing the rule of civil discovery to limit its costs and abuse—which is 80 percent of the cost of Federal civil litigation.

It also proposes giving judges new tools for controlling expert testimony by requiring experts to testify based on widely accepted theories rather than on junk science, requiring the court to certify the expert's legitimacy, and also disallowing experts' fees contingent on success of a lawsuit.

The State reforms mirror the proposals in the Access to Justice Act, and the Federal rules reforms. They also however include important controls on punitive damages, which in many cases provide a windfall to successful plaintiffs based on the arbitrary judgment of the jury. The Council's proposal would limit punitives to an amount equal to total compensatory damages awarded, also requiring a higher standard of proof for a jury's findings that punitives are warranted, and then finally leave the determination of damages to the judge, not to the jury.

The purpose of these proposals is to improve access to justice, to improve it, Mr. President; not to limit it. Justice is not served by meritless suits based on tenuous theories of liability. It is not served when 50 percent of the recovery ends up in the lawyers pocket instead of the injured parties.

It is not served when parties must suffer through years of torturous litigation to get their disputes resolved. But that is the current state of affairs in our courts.

By throwing a little water on the litigation explosion, we can return our civil justice system to an open forum for the resolution of legitimate suits, rather than a wasteful and inefficient vehicle for the generation of attorneys' fees.

I think the statements of my colleagues illuminate the need for reform of our civil justice system. All of the problems they discussed would be at least partly alleviated by implementation of the administration's civil justice reform package: The Access to Justice Act, the Federal rules amendments, and the model State reforms. I hope my colleagues will all join us in support of this program, or at the very least get involved in the debate. Americans know that the legal system needs reform—we have all heard the lawyer jokes. We have an obligation to our constituents to do something to bring a little sanity, and a little efficiency, back into the system.

CIVIL JUSTICE REFORM/GENERAL AVIATION PRODUCT LIABILITY

Mrs. KASSEBAUM. Mr. President, America has always dominated the world in all aspects of aviation—mili-

tary, commercial, and general aviation. Today, however, U.S. dominance in the general aviation field is being threatened by foreign competition. In fact, under the current product liability system, it is unclear whether or not U.S. manufacturers can survive the foreign challenge. Since 1979, unit sales of new domestic aircraft have plummeted over 93 percent and employment is down 70 percent. The Department of Commerce recently ranked general aviation 211th out of 211 industries in terms of economic growth.

There are several reasons this has been a bad decade for the general aviation industry, including high fuel costs and a recession. However, according to nearly every source familiar with the industry, the main reason for the decline is inconsistent and unpredictable product liability laws. These laws drive up the price of domestically produced planes beyond what the market can bear; they give an unfair advantage to foreign competition; and they cost thousands upon thousands of U.S. workers their jobs.

The cost to manufacturers for product liability litigation arising out of general aviation accidents has risen dramatically—from about $24 million in 1979 to over $200 million today. This is happening despite the fact that general aviation safety has continued to improve. Since 1979, both the number of general aviation accidents and the number of fatalities have decreased by about 50 percent. It simply does not make sense for manufacturers to have skyrocketing liability costs at a time when general aviation has never been safer.

Mr. President, we cannot allow thousands of manufacturing jobs to go overseas simply because of our unpredictable product liability laws. We must enact uniform and fair, Federal product liability standards for cases involving general aviation accidents, and we must do it now.

IN NEED OF SERIOUS REPAIR

Mr. DOLE. Mr. President, for the past several years, President Bush and many of us here in the Senate have attempted to reform America's criminal justice system.

Our intentions have been to ensure that the system pays more attention to protecting law abiding citizens and the victims of crime, and to ensure that the guilty are punished.

We have been fought tooth and nail, however, by those who want to maintain the status quo, who are happy with a system that thinks evidence of guilt is less important than the skill of a defense attorney.

The battle continues on that issue, Mr. President, and it also continues on the issue of civil justice reform.

I believe, as do many of my colleagues, that our civil justice system is in need of serious repair. Wasteful and counterproductive litigation is clogging our courts, and driving up costs for large and small businesses, thereby leading to a loss of jobs.

As is the case with our criminal justice system, however, there are those who have blocked any and all reform efforts made in areas such as products liability reform, medical malpractice reform, and a variety of other issues.

I am pleased to join with my Republican colleagues this morning in discussing our plans for reform, our plans for change.

The one issue I want to briefly discuss this morning is how our current products liability laws have crippled the general aviation industry—an industry of great importance to both Kansas and America.

Even though the safety record of general aviation has improved year after year, products liability claims paid by the industry have soared from $24 million to over $210 million in the past decade.

Since most manufacturers are primarily self-insured, these costs fall directly on them, and are then passed on to the consumer, thereby driving the price of airplanes beyond the means of potential consumers. In fact, product liability costs are the largest single factor in the price of a new single engine airplane.

The results of the product liability crisis are staggering: Shipments of domestic aircraft declined from almost 18,000 in 1978 to 1,144 in 1990. Employment by manufacturers has dropped by 50 percent or more, as entire aircraft lines have been discontinued and factories closed.

As a resulted, foreign competitors have targeted the U.S. market and have moved in aggressively. Indeed, prior to 1981, the United States maintained a positive balance of trade in general aviation. For the past decade it has been a negative balance.

Perhaps the Economist put it best when they described the general aviation industry as "an industry killed by lawyers."

My colleague, Senator KASSEBAUM, has taken the lead on the issue, and introduced important legislation which would reform the products liability and tort law in the aviation industry.

This has been a confusing election year. But one thing for sure is that the American people want change. And those who block change in the civil justice system and defend the status quo are simply out of touch with the people.

THE INCREASE OF CIVIL LITIGATION AND THE EXPENSE AND DELAY IN THE FEDERAL COURT SYSTEM

Mr. THURMOND. Mr. President, I rise today to speak about the high costs and lengthy delays that many people argue have become an integral part of our American court system. Over the past several years, litigation has increased dramatically, resulting in burdensome caseloads for all courts, on both the Federal and the State level. With this increase, there has been a rising concern among many members of the judiciary, the bar associations, and the American public that civil litigation has become much too costly and takes far too long to resolve disputes.

The costs of our legal system affect all Americans, not just those who are directly involved in a lawsuit. Industries, professionals, small businesses, and all levels of government face the expenses and time consuming aspects of litigation. These high costs are passed on to every American through increased costs of products, medical treatment, and various services. Further, those who bring frivolous and unnecessary claims abuse our legal system, forcing Americans with legitimate claims to wait increasingly longer periods of time for justice to be served. As a lawyer and a former State judge, I have great respect for our country's system of civil justice, and the constitutional guarantees which protect that system. Yet today, a great many people have expressed criticisms over the inefficiencies and the expenses within our courts. Clearly, action must be considered, at all levels, by State and Federal governments, to seek processes to reduce backlog and expenses.

Mr. President, recognizing that the litigation problem was reaching crisis proportions, Senator BIDEN and I introduced legislation in the last Congress to address this situation. This legislation, the Judicial Improvements Act of 1990, was enacted into law and was intended to increase the administrative efficiency of the civil litigation process in the Federal courts and reduce litigation costs.

Our legislation addressed the problem in two ways. First, we required that each district of the United States implement a civil justice delay and expense reduction plan. The purpose of the plan is to simplify adjudication on the merits, monitor discovery, and improve the overall management of the litigation process. Second, we created 85 new Federal judgeships to provide the necessary judicial manpower to carry out these reforms, as well as easing the burdensome caseloads of many Federal judges.

Mr. President, as well as reducing the cost and delay in the Nation's court system, we must also ensure that the right of every American to be able to bring suit in our courts remains protected. While our earlier legislation was a step in the right direction, there is still much to be done to improve the civil justice system. In his State of the Union Address this year, President Bush asked Congress to pass legislation to reform our civil justice system. The President's Council on Competiveness, chaired by Vice President QUAYLE, issued a detailed agenda for methods to

reduce the burdens in our Nation's courts and to expedite justice. As a result of this action, Senator GRASSLEY introduced S. 2180, the Access to Justice Act earlier this year.

The Access to Justice Act includes a number of reforms designed to reduce inefficiencies and improve access to our courts. For example, included in the bill are provisions that require notice of the intent to file a lawsuit, encourage alternatives to litigation such as mediation and arbitration, and assure proper management of judicial resources. The goal of these changes is to streamline the process and reduce unnecessary delays. Another provision in the legislation will restore judicial immunity for State judicial officers. This proposal is identical to legislation that I have cosponsored with Senator HEFLIN to protect the independence of judicial officers acting in their official capacity.

It is important to ensure that any changes to our present system will encourage fair, yet expeditious resolution of lawsuits for all Americans. The legislation introduced by Senator GRASSLEY, S. 2180, attempts to address some of the inequities in our civil justice system, and I firmly believe that many of its proposals have merit and deserve thoughtful study.

Mr. President, this bill is currently being considered by the Senate Subcommittee on Courts and Administrative Practice of the Judiciary Committee. It is my hope that Senator HEFLIN and Senator GRASSLEY, chairman and ranking member of that subcommittee, will schedule hearings in the near future to consider the Access to Justice Act and to review its proposals, as well as other reforms advanced by the President's Council on Competiveness. Frank discussion of this issue will bring to the forefront the problems in our civil justice system and will assist in providing real solutions to these problems.

Mr. President, I commend Senator GRASSLEY for bringing this issue before us today.

ACCESS TO JUSTICE ACT OF 1992

Mr. SIMPSON. Mr. President, I rise today to commend the able Senator from Iowa—my fine colleague on the Judiciary Committee—for his leadership in bringing this legislation before the Senate and for initiating the national debate on this Civil Justice Reform Act.

For the past several years, Americans have been wholly disillusioned with the manner in which our courts work. There is a very real and growing animosity out there against the system, runaway jury verdicts, and against lawyers in particular. As a humble aside, nowadays if one is a lawyer and a Member of Congress—one might be feeling a pretty potent one-two punch from public opinion. Some of the animosity directed at the legal profession is well deserved. We lawyers need to clean our houses, change our act or else the Congress will do it for us.

On the other side of the ledger are the majority of lawyers—practitioners of this fine and honorable profession of which I am proud to be a part. They are not not the ones being written up in the press because of million dollar verdicts. They do the tedious, hard dry work in that profession to deliver important services in the protection of the rights of their fellow citizens. I trust that in the course of this debate, we will be hearing the views of that majority faction of the legal profession as well.

I believe that by bringing this legislation to the forefront of the national debate, the able Senator from Iowa is providing us a valuable public service in reexamining the system. Furthermore, the hearings on this legislation will also show that the vast majority of attorneys in this country share many of the Senator's concerns regarding the reform of the legal process.

Make no mistake about it, Mr. President, this legislation is more than a mere discussion draft. There are some very worthy points in this legislation. There are things that we in Congress can and that we must do to make the system function both more efficiently and more fairly whenever possible.

We see examples every day of what some in the press refer to as a litigation crisis. I was saddened to learn recently that Piper Aircraft Corp.—among this country's first and foremost general aviation manufacturing corporations—is considering moving its operations outside of the United States. That is most unfortunate. I understand that a significant factor in their decision to leave is that the potential for civil liability has raised the cost of doing business in this country to the point that this very successful company can no longer make a reasonable profit on their sales. We do need to examine whether the scales of justice have been unfairly tilted against the manufacturing industry in this country. The debate on this legislation will also serve that purpose. I'm ready to listen—ready to work for change. Something is very wrong.

So, Mr. President, I want to thank the Senator from Iowa for his leadership and courage and his hard work on this important and extremely significant legislation.

Mr. GORTON addressed the Chair.

The PRESIDENT pro tempore. The Senator from Washington [Mr. GORTON] is recognized under the previous order for not to exceed 10 minutes.

AIRBUS

Mr. GORTON. Mr. President, yesterday in Brussels American and European negotiators announced a tentative agreement limiting the support which the European governments are providing for Airbus. We have not yet heard all of the tales of this agreement, but initial reports are quite encouraging for American competitiveness in the industry which includes the largest single American exporter, the Boeing Co.

Before we go into any of the details, Mr. President, I think it is important that my colleagues keep in mind the framework within which these negotiations have taken place.

The first aircraft produced by Airbus rolled off in 1970. Government support from all of the Airbus participants and subsidies for these planes have gone unchecked now for more than two decades. Our own negotiators have been involved in 5 years of negotiations with the Europeans to arrest or to reduce these subsidies.

As a consequence, of course, Mr. President, this is not a perfect agreement. A perfect agreement would have ended all subsidies, and allowed the two primary American aircraft producers to operate on a totally even plain.

In fact, already at least two of our colleagues here in the Senate and in the House of Representatives have denounced or criticized this agreement because it is not perfect. Nevertheless, it seems to me that while they perceive the empty portions of this glass, it is not a glass more than half full by reason of the skill and persistence of American negotiators. We should not criticize the fact that our negotiators after more than two decades have not hit a home run when what they have is a sharp crisp double which will substantially improve American competitiveness.

As this Senator understands, there are four key elements to these negotiations. First, the tentative agreement calls for a complete end to all production subsidies. While it is somewhat difficult to put a precise number on what this means it has been our belief on good information that there have been several millions of dollars of production subsidies in each and every aircraft produced by Airbus to this point. This will end. It is a significant triumph.

Second, the agreement will end the European governments involvement in aircraft sales campaigns. All too often in competitive rivalry for such sales, we have seen sales of Airbus coupled with new landing rights and European countries are loaned soft loans at less than market interest rates to subsidize such sales on the part of Airbus. This kind of subsidy and these unfair incentives will end if this agreement is made final.

Perhaps most significant and certainly most controversial are research and development subsidies which will both be defined and limited to 33 percent, and must under this agreement

be paid back with interest over a reasonable number of years. In one sense, Mr. President, this does not sound like a particularly good deal. We certainly do not like the idea of a 30-percent developmental subsidy in Europe when here in the United States our companies pay all of their research and developmental costs.

Nevertheless, when one compares this agreement with research and development subsidies, which have come up to and included 100 percent for some of Airbus' aircraft, it is certainly a major step forward.

I cannot conceive that even another 5 years of negotiations would have resulted in zero subsidies for development. So, at this point, at least, we should settle for this 33 percent and keep trying to see to it that all such subsidies are banned in the future.

Fourth, and last, this agreement provides for what is called in the trade real transparency, a term that means that we will be allowed to discover the disclosure of the kind of operation which can be measured. For the first time, for example, we will be able to determine whether Airbus is operating profitably or at a loss. We will get financial information which is not now available to us.

Mr. President, I believe that our trade negotiators have taken on an extremely difficult task and seem, tentatively at least, to have accomplished it well. We have not found our way to perfection; we have not found our way to that proverbial absolutely level playing field, but we will find our American companies better able to compete in the future than in the past. We have made real progress and should be thankful for it.

Mr. BUMPERS addressed the Chair.

The PRESIDENT pro tempore. The Senator from Arkansas is recognized for 15 minutes.

CHILD SUPPORT EQUITY

Mr. BUMPERS. Mr. President, I rise today to introduce a bill, the Child Support Tax Equity Act of 1992, S. 2514, that I have worked on for over a year. I must confess that when my staff first gave me the idea, I was not much taken with it. But I began to read law review articles and study the bill in more detail and came to the conclusion that it is an excellent idea whose time has come.

Mr. President, I used to be a trial lawyer before I became a Governor and a Senator. I had three children to feed, and I would take just about any kind of a case that came in the front door. Most of the cases that came in the front door were divorce cases. Later on, as my practice grew and I became a little more affluent, I gave up domestic relations cases, because they were always difficult and traumatic with a lot of volatility and hostility. As a matter of fact, in a case I had one time, three people were killed. That was not my cup of tea. But I was exposed to the issue of child support.

Let me emphasize that what I will say here about child support is not to denigrate the husbands in divorce, but almost invariably the husband is the one who pays child support. So, Mr. President, in my remarks today I will assume that the husband owes child support and he owes it to his former wife. This assumption is reasonable because the husband is usually the child support payer and the wife, the mother, is the recipient.

I have to confess that of the probably 400 or 500 divorce cases I tried as a trial attorney, of all the husbands I represented, and fathers, almost invariably, who came to me would ask one question first, "What is the least you can get me out for on child support?"

I do not say this to be self-serving, Mr. President, but I have three lovely children. They are all grown now and extremely well educated, stable, and making great contributions to this country in their own way. I do not honestly believe that if my wife, Betty, and I had those kinds of troubles and got divorced that it would have ever occurred to me to not make certain that every one of my children were provided with everything I could possibly afford in support, such as education, health care, food, clothing, housing, all of the necessities. But this was not the attitude of many of my clients.

Mr. President, this bill I am introducing today is called the Child Support Tax Equity Act of 1992. Here is why I am introducing a bill on this subject. Listen to this. In the last year we have figures for, 1989, there were 10 million families in this country where the father was not present. Of the 10 million families where the father was not present, 5 million of them, 50 percent of them, had no child support order or agreement. Of the 5 million families without a father in the home that had a child support order or agreement, only 50 percent, 2.5 million, received all the child support to which they were entitled.

Twenty-five percent received partial support and 25 percent received no support at all despite the fact that they had an order or agreement providing for support.

What that translates into, Mr. President, is that of the 10 million families in this country where a father is not present, 50 percent had no child support order, so they received no support, 25 percent had an order but received partial or no payment, and only 25 percent of the mothers, wives, and children are receiving all the support that is due them. That is a staggering statistic. It is a terrible indictment of the morality and ethics in this country.

Let me just give you some statistics about my home State of Arkansas. The State of West Virginia, the home of the distinguished President pro tempore, is very similar to my State in size, culture, and economy. In 1989, $153 million in child support was owed totally to these families where the husband was not present. And of that amount, only 17.6 percent, or $27 million, was actually paid in that year.

Some of those child support debts were for prior years, but to put it on a more timely and understandable basis, if we just include the current year debts in 1989, the amount that should have been paid for that year was $57 million and only $26 million, or 47 percent, was actually paid.

Mr. President, what can we do? How many bills have been introduced in this body to address this problem? Dozens. We have reciprocity among the States, so that husbands cannot flee to another State to avoid child support. We have all kinds of so-called sticks and carrots to make these people pay the support to which their children are entitled. I applaud every single effort that has been made.

I do not say to this body, Mr. President, that this new bill is perfect, but I do represent it to be the best bill that has ever been introduced on this subject; the bill that is most likely to really give the children the financial support that they are due, and to penalize the husbands for not paying it. This is a bill that actually puts dollars in the pockets of the women who can't collect child support and takes dollars out of pockets of the fathers who refuse to pay child support.

Mr. President, as of this morning I have already convinced Senators DURENBERGER, NUNN, GRASSLEY, LEVIN, SHELBY, LIEBERMAN, BREAUX, INOUYE, REID, KERRY, FOWLER, and DODD, of the correctness of what I just said. I introduce this bill on behalf of all those men who are original cosponsors.

Mr. President, this bill is based on a simple proposition. If a businessman has a bad debt at the end of the year, he can charge it off with a "bad debt" deduction. With the corporate tax rate, which I think is 34 percent, the businessman charges off a million dollar bad debt, and he gets a tax savings of 34 percent of that amount. But, if the taxpayer is a mother with three children, who is entitled to $15,000 a year in support, and her husband is a deadbeat who has either fled the country, fled the State, is in hiding, or simply refuses to pay, and she cannot force him to pay, she cannot deduct a thin dime. This is inequitable. Her bad debt is just as much a bad debt as that businessman's bad debt.

So what we are saying with this bill is if first, you are entitled to child support and you do not get paid; second, you have a legally enforceable court order or agreement to be paid; and third, you have not been able to enforce that court order, you can take a

bad debt deduction up to $5,000 per child if your family has an adjusted gross income of less than $50,000. This bill does not cover people who make more than $50,000 in adjusted gross income. If this bill is as successful as I believe it will be, I will be willing to tinker with the bill and raise that threshold. People ought to be able to deduct their bad debts, regardless of what the family income happens to be.

Most of those women are in the 15-percent tax bracket. I will come back to that in just a moment.

As a requirement for her deducting the bad debt, she has to supply the IRS with this husband's, the derelict husband's Social Security number or other identification. The IRS will then notify him that they are assessing him an additional $15,000 income on his tax return and he will be liable for the tax on that amount as a "discharge of indebtedness."

You might ask, well, some fellow who is paying his support regularly now, let's say he is paying $15,000 a year in support, and he sees this law, he might say: "I can quit paying support and she can deduct the difference on her tax return. All I have to do is just let the IRS assess me that $15,000, and I will pay the tax on that, I am in the 30-percent bracket, so I am going to pay roughly $5,000."

It will not work that way in practice. First of all, most of the women who are receiving full support payments have reasonable relations with the child's father and sophisticated knowledge of their rights. The second reason is that most of those men who are paying their support would not stop paying. And, third, these men can be forced to pay what they owe. They must have jobs if they have been paying child support. And the chances of him being able to avoid paying support are almost nil because the mother under this bill still has the right to collect the full amount due.

If a husband later pays something to the mother after she has taken her deduction and if he has been assessed this $15,000 on his tax return, she has to add the payment to her income and pay tax on it and he will take a deduction. This unwinds the whole transaction.

But getting back to the point I was about to make a moment ago, the Joint Tax Committee did an analysis on this bill. The chairman of the Senate Finance Committee is sitting here; he will be interested in this. The Joint Tax Committee says over a 5-year period, this bill will raise $30 million in revenue.

Why would anybody not want to support a bill that says, first, we are going to help families by giving women the right to deduct the child support they cannot collect; second, we are going to penalize the husbands for their dereliction of duty in not paying the support by making them put it on their tax return; and third, we are going to reduce the deficit in the process?

Mr. President, I do not see how you can improve on that. It has the makings of everything good, and I do not see one single flaw in it.

Mr. President, I am not sure that the Joint Tax Committee in making that revenue assessment, considered one other positive element. I think what they considered was that the women, the mothers, are usually in a 15-percent bracket, and many of the husbands and fathers, or ex-husbands and fathers, are in a 31-percent tax bracket. So when she deducts the $15,000 bad debt, that costs the Treasury 15 percent of that amount. When you add this amount as a discharge of indebtedness to his income, many times he has to pay 31 percent, and that is where the positive revenue flow comes from.

But I do not believe that the Joint Tax Committee took into consideration the fact that if we collect more support from derelict fathers, we lighten the cost of our welfare load. We may be taking some women off welfare if they can deduct their bad debts, and I do not think the Joint Tax Committee considered that in their analysis of the $30 million net revenue increase. So that is a fourth ingredient that argues in favor of this bill.

Now, Mr. President, I ask unanimous consent that my formal statement and outline of the bill and the text of the bill itself be printed in the RECORD; and further, that any others who wish to become an original cosponsor of this bill may do so and introduce statements for the rest of the day on it, and thereby become an original cosponsor of the bill.

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

Mr. BUMPERS. I thank the Chair.

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 2514 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. BENTSEN addressed the Chair.

The PRESIDENT pro tempore. The Senator from Texas [Mr. BENTSEN] is recognized for not to exceed 5 minutes.

Mr. BENTSEN. Mr. President, I ask unanimous consent that I be allowed to proceed for 15 minutes.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection. The Senator from Texas [Mr. BENTSEN], is recognized for not to exceed 15 minutes.

Mr. BENTSEN. Mr. President, I ask unanimous consent that I be allowed to put in my remarks later this afternoon a distributional analysis of the flat tax proposal by the Congressional Budget Office and an analysis by the Joint Economic Committee.

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

(See exhibit 1.)

THE FLAT TAX

Mr. BENTSEN. Mr. President, the Democratic primary campaign between Governor Brown and Governor Clinton is drawing to a close. Governor Brown has proposed a flat rate tax that could be a pivotal issue in a Presidential campaign.

I have been a student of public finance and taxation for a number of years, and I learned long ago that any major change in the Tax Code brings about some significant winners and losers. And that is especially true of a flat rate.

Usually those who gain from tax changes can be clearly identified. We saw that in the 1980's when President Reagan focused on cutting taxes for the wealthiest Americans by an average of $16,400 while raising taxes on middle-income taxpayers. The wealthy gained at everyone else's expense.

That is why congressional Democrats voted to cut middle-income taxes last month while raising them in the top 1 percent. We did that intentionally.

A progressive tax system is critical to our notion of tax fairness and, yet, under the present Tax Code, the tax rate paid by someone earning $1 million on Wall Street is only three points higher than someone earning $35,000 on Main Street. The tax bill passed by Congress, but vetoed by the President, would have redressed that inequity.

Governor Brown says he would like to introduce a value-added tax, or a VAT, to replace the corporate income tax, and a flat rate of 13 percent on all personal income to replace Social Security and personal income taxes. Deductions for mortgage interest, rent, and charitable contributions would be retained along with taxes on tobacco and alcohol.

I know that the polls and focus groups show wide appeal for the flat rate tax. A simple tax with no loopholes; paid by all. But, in tax law the devil is in the details. So I studied the flat tax proposal. I studied it carefully. I wanted to find out if claims of tax fairness held water.

I also examined his VAT proposal. That tax is widely used in Europe. But it is coupled with a progressive income tax, since middle- and lower-income people spend a greater share of their income on items like food, shelter, and medicine. Unless adjustments are made to increase progressivity of the tax system a VAT will jeopardize tax fairness.

But Governor Brown's plan does not include those adjustments. In fact, his plan does just the opposite.

A regressive VAT is combined with a flat tax imposed on the first dollar of income to produce an overall regressive tax plan.

It is a plan which only those with high incomes could love. It finances

tax cuts for corporations and the well-to-do by raising taxes for everyone else—a bigger tax bite for the same working families whose incomes fell and whose taxes rose during the eighties.

If you liked what happened to taxes under President Reagan, you will love this flat tax.

Two weeks ago, Democrats voted to raise taxes on the 1 percent of Americans at the top of the income scale. This flat tax would cut their taxes by $45,080 apiece. That is nearly three times more than their taxes were cut under President Reagan.

Two weeks ago, Democrats voted to cut taxes on the average family with two children by 25 percent. The flat tax instead would reduce taxes on the wealthiest 1 percent of Americans by 27 percent. And, taxes on middle-income families would go up 22.5 percent, or more than $1,200.00, according to the Congressional Budget Office.

Who are the winners, then, in the fine print of Governor Brown's flat tax proposal?

Those in the top bracket, of course. Incomes of the top quintile will go up 6.8 percent while everyone else's income will go down. The tax rate on their capital gains for example would fall from 31 percent to 13 percent—which is 2.5 points lower than that proposed by President Bush. According to the LA Times one well-known wealthy couple, President and Mrs. Bush, would have enjoyed a $45,000 tax cut last year under the flat tax. And, Governor Brown's plan would let President Bush cut his taxes even more if he sets up a family corporation.

The other winner is even bigger. Indeed, the flat tax advocates seem to have fallen under the sway of Charles Wilson, President Eisenhower's Secretary of Defense and the former president of General Motors who declared, "What's good for GM is good for America."

The flat tax presumes that the best thing for GM is to pay no taxes at all. It replaces the entire corporate income tax with a VAT. That shifts all of the corporate tax burden onto consumers. In one breath-taking swoop the Brown tax plan will simply exempt corporations from taxes—blasting a $100-billion hole in the U.S. Treasury and destroying tax fairness. You can't win any bigger than that.

I believe the VAT deserves careful study to see how it would work, how it might increase savings and investment. But to replace the entire corporate income tax structure with a VAT overnight seems preposterous.

Where there are winners, there are also losers. And, the flat tax produces plenty of them. The biggest losers may be middle-income families.

They are paying higher taxes, drawing down saving, spending more time commuting and spending less with children. All the while, they are falling further and further behind inflation, despite two paychecks.

In 1991, for the first time, Americans spent more on health care than on housing. And, household wealth fell as housing prices dropped nationwide for the first time since the Great Depression.

Why on Earth would anyone seriously consider a tax plan that requires middle-income Americans to pay taxes twice on the same dollar—once when earned and again when spent—so corporations can get off scot-free?

But, there is even worse news for middle-income families. Because they spend a greater share of their income and are able to save less of it than the wealthy, the combination of a flat tax and VAT means that those with the highest incomes will pay a lower tax rate than they do.

The poor are big losers as well. They will pay 23.4 percent of their income in Federal taxes with the flat tax according to CBO, while the top 1 percent will pay only 20.9 percent according to the Joint Economic Committee. They would lose the earned income credit which eliminates their income tax obligation and cuts the effective tax rate to zero. Families who are currently paying no income tax would be paying both a 13-percent income tax and VAT on every dollar they earn and spend. Overall, the flat tax will skyrocket taxes on the poor. Taxes on the lowest quintile will jump from 7.7 percent to 27.7 percent, causing their income to drop a big 21.7 percent, according to CBO. The wealthiest Americans will be paying a lower tax than the poorest Americans.

That will reverse two generations of Democratic efforts to bring a decent standard of living to all Americans. The flat tax will do for economic fairness what Saddam Hussein did for world peace.

It turns the fundamental concept of American taxation, the concept of progressivity, flat on its head. The more you earn, the less you pay. Robin Hood taxed the wealthy to give to the poor. In contrast, this flat tax plan might well have been designed by the Sheriff of Nottingham.

Among other flat tax losers are the elderly. Franklin Roosevelt overcame ferocious opposition to establish Social Security back in the thirties. Since then, it has matured to become the guarantor in retirement of living standards and health care for most elderly families.

The program is a success. But, its success rests on its independence from the Federal revenue pot. The budget may rise or fall; taxes may rise or fall. But the Social Security and Medicare are a social insurance system; they stand in splendid isolation, shielded from the whims of Washington by their own dedicated tax and trust funds.

This flat tax does not respect the independence of Social Security. By eliminating the dedicated payroll tax, it sets a computer virus loose in the Social Security system. It would change Social Security from an insurance system to a welfare system.

The flat tax plan will worsen the deficit, too. According to sketchy details provided the Joint Tax Committee, it would add at least $100 billion annually to the deficit.

That would force up interest rates and spook Wall Street. Remember when President Bush's tax plan threatened to add $32 billion to the deficit over 6 years Wall Street gulped, and promptly sent mortgage rates up nearly a point. And Tuesday, we go the inevitable bad news: new home sales dropped 2.7 percent in February. Yesterday we learned that new construction spending fell nearing 1 point in February.

Capital investment plunged one-third in the eighties. The very last thing America needs now is higher real interest rates and higher capital costs.

Another disturbing, though less understood, aspect of the flat tax is the danger it poses to tax simplification and compliance. Governor Brown's goal of a simple and easily monitored tax system is exactly right. But, his flat tax is anything but simple. Much of the complexity in the Tax Code centers on the definition of income. All that controversy will remain. And with it all the lobbyists, lawyers, and accountants.

Worse, the flat tax opens the largest loophole in history—a loophole called incorporation. With a zero corporate tax rate, the lawyers and accountants will shift every asset they can get their hands on into corporate ownership. It will drive a stake in the heart of tax compliance.

For the poorest Americans, the richest Americans and everyone in between tax dodging will replace baseball as the national pastime. Television will become glutted with 800 numbers hawking incorporation schemes. Just dial 1-800 SHELTER.

It will discourage tax compliance as well. The fundamental sense of fairness that undergirds tax compliance by Americans—the rough parity in treatment of personal and corporate income—will dim. Tax enforcement will inevitably become a nightmare.

The American family is under the worst assault since the Great Depression. This recession has unveiled a pessimism about the future not witnessed since my father's time. The economy will recover, it always does though it may be a muddled one this time around. But, the dimming of expectations for a brighter future—the dimming of the American dream—is not likely to recover with it. This new sobriety recognizes that our leaders are dithering when hard choices need to be made.

Americans want good jobs and schools, a secure home and freedom from crime and drugs. But most of all, they want the truth. They will not get it from this plan.

Yes, the American people want change—in part because they think the present system is not fair. But, they will reject any proposal to tax them twice and corporations not at all. They will reject a scheme that turns tax progressivity on its head. And, they will reject any scheme that threatens the one Government program they know works well—Social Security.

EXHIBIT 1

JOINT ECONOMIC COMMITTEE,
Washington, DC, April 2, 1992.

MEMORANDUM

To: Senator Lloyd Bentsen.
From: George Tyler, Senior Economist.
Subject: How the Top One Percent Fare with a Flat Tax.

This is in reply to your request for information on how a combination flat rate income tax of 13 percent and a 13 percent value added tax covering goods and services would change effective federal tax rates for the top one percent of tax filers. The only deductions from income are mortgage interest and charitable deductions. Income and tax data for calendar year 1992 was utilized from the Congressional Budget Office (CBO) tax simulation model. CBO data shows that mortgage interest and charitable contribution deductions average $54,000 per household in this strata. The analysis utilizes the assumption, based on Commerce Department data derived from the Consumer Expenditure Survey, that seventy percent (70) of pretax income of the top income strata is consumed and is subject to the VAT tax.

Under the current tax regime, the pretax mean income of the top one percent of income filers in 1992 is projected by CBO to be $566,700. They are projected to pay $163,300 in federal excise, income, corporate and social security taxes, or an effective federal tax rate of 28.8 percent. Their effective income tax rate alone is projected to be 22.4 percent this year or $126,900.

Under the flat tax/VAT combination, a flat rate of 13 percent would apply to all income, less deductions for home mortgage interest and charitable contributions which total $54,000 per tax filer. The flat tax would reduce the effective income tax rate of the top one percent of tax filers to 11.8 percent from 22.4 percent. Their total effective federal tax rate would decline under the flat/VAT substitute to 20.9 percent from 28.8 percent, a tax reduction of 27 percent or $45,080 apiece on average for the top one percent of tax filers.

Pretax Income	$566,700
Less deductions	54,000
Taxable Income	512,700
Tax:	
13 percent tax	[1] 66,651
VAT	[2] 51,570
Total tax	118,220
Aftertax Income	394,480

[1] 11.8 percent of income.
[2] 20.9 percent of income.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, April 2, 1992.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed staff memorandum responds to your request of March 30 that the Congressional Budget Office (CBO) calculate the distributional effects of the substitution of a flat-rate income tax combined with a value-added tax for current income, payroll, and excise taxes (excluding taxes on alcohol and tobacco). We have built upon existing CBO estimates of a value-added tax in order to provide the analysis in a timely fashion.

Sincerely,

ROBERT D. REISCHAUER,
Director.

[CBO Staff Memorandum, April 1992]

DISTRIBUTIONAL EFFECTS OF SUBSTITUTING A FLAT-RATE INCOME TAX AND A VALUE-ADDED TAX FOR CURRENT FEDERAL INCOME, PAYROLL, AND EXCISE TAXES

At the request of Senator Bentsen, the Congressional Budget Office (CBO) has simulated the effect on families' federal taxes and after-tax income of substituting a combination of a flat-rate income tax and a value-added tax (VAT) for present federal income, payroll, and excise taxes (excluding excise taxes levied on tobacco and alcoholic beverages). The changes were simulated at 1989 income levels using income and payroll tax rates in effect in 1992.[1] The flat-rate income tax and the VAT rates were set so as to yield no net change in the federal deficit in combination with the simulated elimination of those existing federal taxes.[2]

As specified in the request, the simulated flat-rate income tax is levied on the income-tax base as defined for the present personal income tax, except that all Social Security benefits, unemployment insurance benefits, and other transfer payments are tax-exempt. Existing income adjustments and itemized deductions are eliminated, as are personal exemptions, the standard deduction and all credits. Rent payments, home mortgage interest and charitable contributions, however, are deductible from taxable income.

The tax base for the simulated VAT excludes medical care, education expenditures, and contributions to religious and charitable organizations.[3] The value-added tax is assumed to raise the price of taxable goods and services, so the burden of the tax was allocated in proportion to family consumption of taxed goods and services. The higher prices for those goods also raise the aggregate price level, triggering an increase in such indexed transfer payments as Social Security benefits and Supplemental Security Income payments. The simulation incorporates the increased personal income from such indexation.

In the simulation, the benefits of eliminating existing federal income, payroll and excise taxes are distributed to families based on assumptions about who bears the burden of each tax. Although some federal taxes are paid by corporations, noncorporate businesses, and even non-profit institutions, the economic burden of all taxes ultimately falls on families and individuals. Taxes may reduce family income directly through higher individual income or employee payroll taxes, or they may reduce family income indirectly either through higher taxes paid by businesses or by causing prices to rise, thereby reducing the purchasing power of family income.

The benefit of eliminating individual income taxes is attributed to families who directly pay the tax. The benefit of eliminating federal payroll taxes—including both the employer's and the employee's share—is allocated to employees in proportion to the tax on their earnings. That allocation assumes that the employer's share lowers wages in the long run. The benefit of eliminating the corporate tax is allocated to recipients of realized capital income (the sum of rents, interest, dividends, and realized capital gains) in proportion to their capital income.[4] That allocation assumes that the relative pre-tax returns of all assets change so as to shift the burden of the corporate tax from corporate shareholders to all recipients of income from capital.

Because eliminating employer payroll taxes and corporate income taxes would raise family incomes, the tax base for the flat-rate income tax is larger than the base for existing federal individual income taxes.

TABLE 1.—DISTRIBUTIONAL EFFECTS OF SUBSTITUTING A FLAT-RATE INCOME TAX AND A VALUE-ADDED TAX FOR CURRENT FEDERAL INCOME, PAYROLL, AND EXCISE TAXES

[At 1989 income levels assuming 1992 tax rates]

Income Quintile[1]	Income after tax		Effective tax rates	
	Average	Percentage change	1992 tax law	After change
Lowest	6,700	−21.7	7.7	27.7
Second	14,800	−11.0	15.2	24.5
Middle	23,100	−5.3	19.1	23.4
Fourth	32,400	−1.3	21.7	22.7
Highest	70,300	6.8	26.7	21.7
All quintiles	29,200		23.1	23.1

[1] Families are ranked by adjusted family income (pre-tax income from each family divided by the 1989 poverty threshold for a family of that size). Pre-tax family income is the sum of wages, salaries, self-employment income, rents, taxable and nontaxable interest, dividends, realized capital gains, and all cash transfer payments. Income also includes the employer's share of Social Security and federal unemployment insurance payroll taxes, and corporate income taxes. Quintiles contain equal numbers of people. Families with zero or negative income are excluded from the lowest income category but included in the total.

Source: Congressional Budget Office.

One measure of the distributional effect of a change in tax policy is the resulting percentage change in after-tax income. As shown in Table 1, CBO's simulation of substituting a flat-rate income tax and a VAT for existing federal income, payroll, and excise taxes indicates that overall, the change in taxes would be regressive. After-tax income for families in the bottom four-fifths of the income distribution would decrease, with the largest decrease for families in the bottom fifth. After-tax income for families in the highest fifth of the income distribution would increase.

Families in the bottom one-fifth pay relatively little in combined income and payroll taxes compared with other families. Many low-income families actually receive subsidies from the income tax rather than pay taxes because of the earned-income credit. Thus, low-income families would receive little tax relief from eliminating income and payroll taxes. In contrast, in any given year,

[1] 1989 is the most recent year for which complete income data are available.

[2] The rates for both are 16 percent. They depend on the definition of the tax base and the year of the simulation and could be higher or lower if either of those were changed.

[3] The base was the zero-rated merit goods base defined in the recent CBO study, *Effects of Adopting a Value-Added Tax* (February 1992).

[4] These assumptions about tax incidence are the same as the assumptions used for the value-added tax simulations in *Effects of Adopting a Value-Added Tax*.

many of these families spend much more than their annual income, financing such spending by borrowing or selling assets. These families would pay a significant portion of their income in value-added taxes.

The change in progressivity can also be measured by the change in effective tax rates—the percentage of pre-tax family income paid in federal taxes. The combination of a flat-rate income tax and a VAT would lower the effective tax rate for families in the top quintile but would raise the effective tax rate for families in the bottom four quintiles. For families in the lowest quintile, the effective tax rate would rise by 20 percentage points.

Because some portion of families with low incomes in a single year are not low-income by other standards, the decrease in progressivity measured by changes in after-tax income and effective tax rates based on a single year's income overstates the change over a typical family's life. Some elderly families, for example, are able to sell assets to pay for spending that exceeds income; value-added taxes would take up a larger share of the income of such families than it would for families that finance spending entirely from their annual income. The same is true for young families who borrow against future income to pay for current consumption. Value-added taxes would therefore appear to be more regressive than they are because low-income families who can pay for spending from existing wealth or from future high earnings are not necessarily poor.

Simulations of the sort reported in this memorandum are fairly crude approximations. Many details that would have to be specified in the tax code would affect the actual results. In addition, simulations are sensitive to the tax incidence assumptions that are used. While there is a broad consensus in the economics profession about the incidence of certain taxes, such as the personal income tax, there is more disagreement or uncertainty about the incidence of other taxes. The substitution of a flat-rate income tax and VAT for existing income, payroll, and excise taxes would represent a major economic restructuring and would undoubtedly induce people to alter their economic behavior. This could result in significant changes in incomes, patterns of consumption, aggregate economic activity, asset values, and so forth. Finally, tax administration and compliance costs could change. All of those effects, which could alter the VAT and flat-rate income tax rate needed to yield no net change in the deficit and the ultimate effect on people's after-tax income, lie beyond the scope of this analysis.

The PRESIDENT pro tempore. The Senator from North Dakota [Mr. CONRAD] is recognized under the order for not to exceed 10 minutes.

Mr. CONRAD. Mr. President, I ask unanimous consent I be allowed to proceed for an additional 10 minutes, if necessary.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection. The Senator from North Dakota [Mr. CONRAD] is recognized for not to exceed 20 minutes.

KEEPING MY PLEDGE TO THE PEOPLE OF NORTH DAKOTA

Mr. CONRAD. Mr. President, 6 years ago, in running for the U.S. Senate, I made a pledge. I promised that if the budget deficit, the trade deficit, and real interest rates were not brought under control, I would not seek reelection. Mr. President, my party is having its convention in North Dakota this weekend and it is time to take stock.

The trade deficit is down sharply from 1986. Real interest rates are down dramatically. But the budget deficit is completely out of control.

Many have urged me to run anyway. They have said to me, "You did everything that you could." Certainly that is true; I have done everything I could do. I have voted against 74 percent of the spending voted on by Congress in my term. I have authored one of the most ambitious deficit reduction plans presented by any Member to the Senate Budget Committee, a plan that reduced the deficit $559 billion over 5 years. I was one of only eight to vote against the S&L bailout.

Last year, I supported in the Budget Committee a budget freeze that would have saved $124 billion. That lost by only 1 vote, 11 to 10. I have been a leader in urging that we quit paying the defense bills for Germany and Japan when we cannot pay our own, getting an amendment passed that requires Japan to start paying for our troops in Japan or we will bring them home.

One of my first acts in the U.S. Senate was to propose a 2-percent cut in spending, across the board, with the exceptions of the trust funds of Social Security and Medicare. I got 36 votes, 19 Democrats and 17 Republicans.

I founded the deficit reduction caucus when I came to this body. It now consists of 40 Senators, Democrats and Republicans, that meet frequently on deficit reduction options.

Others have said to me I ought to run because I have a strong record of fighting for North Dakota. Mr. President, I am intensely proud of the legislation I have helped craft that has made a difference to my State.

In 1987, the farm credit bill rescued the Farm Credit System, an agricultural lending cooperative. I just met with farm credit officials this morning and am told that that this legislation, the Agricultural Credit Act of 1987, which prevented the bankruptcy of the Farm Credit System, will not cost the taxpayers one dime. Mr. President, that legislation meant $300 million to my State.

In 1988, when my State was hit with the worst drought since the 1930's, I worked in the Agriculture Committee to offer changes to the benefits formula that meant my State was given the treatment that it needed and deserved. That drought relief legislation meant $411 million to the State of North Dakota.

In 1989, again when we were hit with drought and some just wanted to keep drought relief money for the winter wheat States, I stood in the way. I said no, no drought relief legislation can move until we have had a chance to see what the needs are of the northern tier States. And, again, we were plagued by drought, the disaster relief bill meant $123 million to my State in 1989. It was not pork, Mr. President, it was responding to a real need.

In 1990, in the farm bill, I was involved in many provisions that were very important to my State. I was the author of the first-time ever oil seeds legislation. Along with my colleague from South Dakota, Senator DASCHLE, I helped save the crop insurance system and led the fight on the floor to preserve the sugar program. Again, with my colleague from South Dakota, I played an active role in preserving the honey program that is important to my State.

Perhaps most important, and the thing I am most proud of in the 1990 farm bill, was the passage of legislation to encourage the commercialization of industrial uses of agricultural commodities. That bill has now become law and is funded. Commercialization will now provide part of the money necessary to take the outstanding basic research we do in this country, commercialize it, and take it to the marketplace.

Mr. President, I am proud of the work that I have done to bring jobs to my State. The economy of North Dakota desperately needs diversification, and I have played an active role, along with others, in bringing U.S. Health Care to Bismarck, Choice Hotels to Minot, ND, Impact Telemarketing to Grafton, ND, and we are on the verge of bringing the Dakota Catalyst to Williston, ND.

Mr. President, I have worked hard to stay in touch with my State. I have held 1,000 meetings with the public, including over 200 community forums, while maintaining a 99.5-percent voting record. I am proud of an outstanding staff that rarely leaves my office before 7 o'clock at night and, in some cases, has worked around the clock to make certain that my State was properly represented.

But, Mr. President, there is a tremendous air of cynicism in the country, and I do not want to contribute to it. I know there are those who will support, oh, he must be afraid of defeat. Mr. President, no one who knows me very well is going to suggest that. I have taken on some of the toughest fights and the longest odds in my political career in North Dakota.

When I ran for this office in 1986, I started out 38 points behind. I had about $176. My opponent had nearly a million dollars, so I am not afraid of long odds.

Very frankly, in the race in 1992, I would not face long odds. My polls show me running very strongly in 1992. In addition, I have a strong record and the resources to make certain that it is heard. But, Mr. President, while all of

that is true, it is also true that I made a promise, I made a pledge. I was raised to be honest, to keep my word.

Mr. President, I have struggled with this decision for months. And I have concluded there is only one right course, and that is to keep my pledge. No position is as important to me as my good name, my honor, and my integrity.

Therefore, Mr. President, I will not be a candidate for reelection to the U.S. Senate.

I thank the Chair and yield the floor.

Mr. KERRY. Mr. President, what is the order?

The PRESIDENT pro tempore. The order is as follows: The Senate is transacting morning business, and Senators may be recognized not to exceed 5 minutes during that period. But the Senator from Nevada has an order for up to 10 minutes. The Senator from Massachusetts [Mr. KERRY] has an order for up to 40 minutes. The Senator from Michigan [Mr. LEVIN] has an order for up to 10 minutes.

Mr. KERRY. Mr. President, the majority leader is here. I know he wants to say something and I would like to say something about the comments we just heard and would like to reserve the time I have under the order.

The PRESIDENT pro tempore. The majority leader is recognized.

SENATOR CONRAD WILL BE MISSED

Mr. MITCHELL. Mr. President, I want to express in behalf of all Senators my deep regret at the announcement that was just made by Senator CONRAD. Senator CONRAD has served the people of his State with great energy, aggressiveness, and distinction. And he served the people of the Nation as well. In the short space of one Senate term, he has made a valuable contribution to the development of national policies which have caused the improvement in the lives of millions of Americans which would not otherwise have occurred.

He has a reputation for candor. He has a reputation for total integrity. And we saw both of those characteristics on display this afternoon.

I wish Senator CONRAD and Mrs. Conrad the very best. He is still a very young man and I hope will continue his contribution to public service and to public policy in some other form and fashion. I know that I speak for every Member of the Senate when I say that he will be sorely missed and we all wish him the best. May God continue to bless Senator CONRAD and his family.

Several Senators addressed the Chair.

ORDER OF PROCEDURE

Mr. KERRY. Mr. President, I would like to ask the majority leader, I know that under the order time is reserved for a number of Senators, but I believe that even under the order that time might now go beyond what was appropriated for morning business. A number of my colleagues have come to me and asked me for some time. I have a long amount of time, and I do not want to hold them on the floor to have to listen to me to wait for it. If the majority leader is willing to guarantee the time for morning business beyond 1:30, I will be happy to wait for them to go before me. Is that possible?

The PRESIDENT pro tempore. The majority leader.

EXTENSION OF MORNING BUSINESS

Mr. MITCHELL. Mr. President, I am advised by staff that the only time that has been allocated that will be used is 40 minutes for the Senator from Massachusetts and 10 minutes for the Senator from Nevada. That totals 50 minutes. To accommodate the other Senators who may wish to speak, I would add to the remaining 10 minutes, 15 more minutes, and I therefore ask unanimous consent that the period for morning business, Mr. President, be extended to 1:45 p.m.

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

Mr. KERRY. Mr. President, if I can ask for a modification, I had originally asked for 45 minutes. I know 5 minutes out of 40——

Mr. MITCHELL. Forty-five minutes? I apologize. I was told it was 40 minutes.

Mr. KERRY. It was in the order that was granted but I had originally asked for 45. If it is possible to have it I would request it.

Mr. MITCHELL. Mr. President, there is no problem making that 45 minutes. That would still leave 20 minutes for additional remarks, and if we get to that time and other Senators wish to address and make remarks with respect to Senator CONRAD or other matters it will not be difficult.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Arizona [Mr. DECONCINI].

PRIVILEGE OF THE FLOOR

Mr. DECONCINI. Mr. President, I ask unanimous consent that Sandy Lindsay be permitted the privileges of the floor for morning business.

The PRESIDING OFFICER (Mr. KERREY). Without objection, it is so ordered.

RETIREMENT OF SENATOR CONRAD

Mr. DECONCINI. Mr. President, I am quite surprised and disappointed at the Senator from North Dakota's remarks today. I think this body will be much less without him. I understand that he feels very strongly. I have gotten to know KENT and his wife Lucy quite well. My wife, Susie, and I have visited with KENT and Lucy on several occasions over the past 5 years.

I understand his deep commitment to reducing the deficit, but I must say, Mr. President, I am sorry to see that he feels responsible, that he has failed and must not continue to serve in this body because the deficit has not been balanced. Senator CONRAD came here and stood against some of us here who were willing to adopt different budget agreements. We knew in our heart we were not going to bring forth a balanced budget. He stood up against it. He fought a good fight, and he has everything to be proud of with the effort that he put forth.

So for one Senator, I am very sorry. It is a sad day to see he feels that the responsibility for this deficit has to fall on his shoulders. The deficit was out of control before he took office and it should not in any way or form rest on his shoulders. He is a man of great integrity and he has worked his heart out trying to reduce that deficit. Quite frankly, he has often been a lonely voice when many of us who feel very strongly about it as well have not been willing to oppose further deficit growth. Each time, my friend and colleague, stood taller than all others. Again, I am very saddened by his announcement and believe all my colleagues in the Senate share in my grief.

Several Senators addressed the Chair.

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

RETIREMENT OF SENATOR CONRAD

Mr. LEAHY. Mr. President, I will speak very briefly. I know other Senators wish to speak to this subject.

I came to the floor because I had been advised of the remarks Senator CONRAD would make. I want to note this, Mr. President. In 1986, when Senator CONRAD was elected, I became chairman of the Senate Agriculture Committee. I urged Senator CONRAD to join that committee and I did so because I was very impressed with his integrity, his abilities, and his intelligence. In the years the Senator served with me on the Agriculture Committee he proved my original feelings true. His integrity, ability, and intelligence never wavered, never waned.

Senator CONRAD has not taken any assignment given in this body lightly. He has put himself wholeheartedly into every single issue he has had—no matter how large, or how small. At times, when perhaps others might be willing to just let something slide by, he has given us the added impetus, and sometimes conscience, to do what was necessary—to go the extra distance.

I traveled with him to his home State of North Dakota during a terrible drought and watched him organize, work, and agonize over efforts to help the people of his State. I watched

how they reacted to him. North Dakota looked to him for leadership and aid, and they were not disappointed.

I have always known Senator CONRAD to be just and fair and good. I have known Senator CONRAD to speak not for his own interests, not just for the people of his State, but for the best of every State—the whole United States of America.

I admire Senator CONRAD. I wish he would not leave. This body will be lesser for it. Senator CONRAD's State, the United States, and each of us in this body has benefited from him being here, and we all share a loss today.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I have 10 minutes reserved. Senator KERRY has 45 minutes reserved. It is no one's fault, but I have been here several times today trying to find time for my 10 minutes. I know there are other people wishing to give shorter statements. I wonder if we could have unanimous consent that I could come at 20 minutes until 1 and give my statement. That will leave opportunity for Senator KERRY to give his, Senator JOHNSTON, and Senator HEFLIN and extend the morning business until 10 until 2.

The PRESIDING OFFICER. Did the Senator say 20 minutes to 1 or 20 minutes to 2?

Mr. REID. Pardon me.

The PRESIDING OFFICER. Did the Senator wish to have time at 20 to 1 or 20 to 2?

Mr. REID. Yes, 20 to 2 for 10 minutes.

The PRESIDING OFFICER. Is there objection to that request?

Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I be recognized for 2 minutes immediately following the distinguished Senator from Nevada.

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

RETIREMENT OF SENATOR CONRAD

Mr. JOHNSTON. Mr. President, I have been in the Senate for 20 years. I have seen Senators come and go—some great, some good, some less so.

Mr. President, I have seen few, if any, Senators who have achieved as much in their first 6 years as KENT CONRAD of North Dakota. I have seen few, if any, Senators in that 20 years who have had the promise of KENT CONRAD.

Mr. President, I did not know that Senator CONRAD was going to announce his retirement today. It hits me with deep personal disappointment because I serve with him on the Energy Committee where he has been a stalwart.

I just yesterday, Mr. President, was telling someone of Senator CONRAD's extraordinary ability, extraordinary integrity, extraordinary contribution to this body. To hear today that he is retiring is really a personal blow, and I think, Mr. President, it does say something about politics in America today. It is deeply disturbing and deeply disappointing to me, as I know it is to other colleagues.

I just wonder if people of North Dakota understand what they would be losing if Senator CONRAD is, in fact, retiring. I just asked him if it was a final decision. He said yes. I would urge him now to reconsider, and I would urge all Senators to urge him to reconsider. And I urge the people of North Dakota to do the same.

Mr. President, you are not going to find another KENT CONRAD. I hate to see this body lose him, and I hate to see the country lose his service.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

A MAN OF HIS WORD

Mr. HEFLIN. Mr. President, the 103d Congress and succeeding Congresses will have a void, with the absence of KENT CONRAD, in this body. We will have a void in many other ways. I do not believe there is another Member of the Senate who has a computer mind like KENT CONRAD, to be able to take numbers, figures, and to be able to calculate them in such a manner to design, to illustrate, legislation that might be before us.

He is a man of his word. His word is his bond. This is something that we need more of in regard to the operation of our Congress. I admire him. He is my friend. He is the farmers' friend.

He will be, indeed, missed, as well as his wonderful wife, Lucy. We hope for him the best in the future, and we feel that in the future America ought to some way or another be able to recapture his abilities to help us solve the problems.

His fight to reduce the deficit, his fight for a constitutional amendment requiring a balanced budget, must go on. Perhaps his leaving in this manner will bring us to our senses in regard to those issues.

KENT, we will miss you. We love you. We will keep in contact with you. We hope to see you again.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

TERRIBLY SADDENED

Mr. BUMPERS. Mr. President, I join all of my colleagues, those who have spoken and those who are yet to speak, on the subject of KENT CONRAD's announcement that he will not seek reelection; and say that we are all not only shocked, but more importantly, terribly saddened.

The American people for the most part do not know KENT CONRAD. It is true most Senators around here are well known in their States, but not very well known outside their States. So his announcement today that he has chosen not to seek reelection—and he has only been here 1 term—might not make a big splash across the country. But that is sad, too, because they are all big losers with this decision.

I understand it perfectly. His wife was almost killed by a mugger over the Christmas holidays. Everybody knows that the country is in a pretty foul mood.

Even so, I went to North Dakota about 3 months ago to make an appearance for Senator CONRAD at a big event he had out there to promote industry and economic growth in North Dakota. He had told me there would be 2,000 people there. Mr. President, there were 3,000 people there.

I walked around those exhibits in the convention center there. I watched the people gravitate to him, smile; come up to him and express their pleasure at his being there; and, more importantly, their gratitude for the fine job he was doing in the Senate.

Oftentimes, when the country is in the mood it is in right now, you know, people sometimes say things cannot get any worse, and then they almost invariably do. Well, they have today. Things have gotten much worse for the country today because of his announcement.

As is so often the case, when the mood of the country is as it is right now, it is the good guys like Senator CONRAD who almost invariably announce that they have had it and they are not coming back.

Senator RUDMAN has already made that decision.

So, Mr. President, I sat on the Energy Committee with him; I consider him one of my very best friends; and I have watched him grow as I have never seen any other Senator in this body grow in one short term. Senator Stennis used to say some Senators grow and some swell. KENT CONRAD is the classic case of a Senator who grew.

I can tell you, this country is much worse off with this decision, especially in North Dakota. I love him, and I will miss him very much.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

A SENSE OF LOSS

Mr. DASCHLE. Mr. President, I rise to associate myself with the remarks of the distinguished Senator from Arkansas. He said it so eloquently, as only he can.

I also share the views expressed by many of my colleagues this afternoon regarding the distinguished Senator from North Dakota. This Senator feels a genuine loss. It is difficult to express the deep-seated feelings that I have about our colleague.

He represents our sister State. Senator CONRAD and I began our Senate careers together in 1987. I would like to

think in some respects that I share the qualities in Senator CONRAD that I admire so much. The junior Senator from North Dakota embodies all of the ideals, all of the strengths, all of those things that we admire so deeply in this body. And I must say that I am not the Senator he is. He is more idealistic, more determined, and more successful than am I. He is what I would like to be at this stage in my career.

So like Senator BUMPERS, I express a sense of loss, not only for the State of North Dakota and for our country, but for this body. There are those to whom you turn for guidance, for advice, for friendship, for strength.

Senator CONRAD was that person to me. Whether it was in the Senate Agriculture Committee, here on the floor, or whether it was in our mutual circumstances, he always found the ability to provide me with his insight and valuable counsel. We would laugh together and together express the hope that we could muddle through yet another day, as difficult as that day may have appeared at the time.

KENT CONRAD is the best of the best, the brightest of the brightest. My wife Linda and I have had the good fortune to call KENT and Lucy our friends for 6 years. We look forward to continuing that friendship in another role. We look forward to the contribution that we know KENT CONRAD will continue to make, not only in political life, but in the country as a whole.

So I rise to wish them well and to express deep regret and profound disappointment at the loss of one of the finest colleagues we have in the U.S. Senate.

I yield the floor.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I know the Senator from Massachusetts [Mr. KERRY] has been seeking recognition. He has a rather lengthy statement. I do not want to take his time.

Are we in morning business now, Mr. President?

The PRESIDING OFFICER. We are.

Mr. PRYOR. Mr. President, if the Senator from Massachusetts requests additional time, I will be very glad to ask for it.

Otherwise, let me make a comment or two regarding Senator CONRAD.

YOU JUST HURT ALL OVER

Mr. President, there are days around this place, in this body, in this institution, frankly, when something happens, and the only way I can describe it is that you just hurt all over. This is one of those days. This Senator from Arkansas right now is hurting. I am hurting all over, because just a moment ago, I heard about the retirement statement of our friend and colleague from North Dakota, that most able and splendid Senator from North Dakota, Senator KENT CONRAD.

Mr. President, I am almost beyond words to try right now to describe what his service has meant to this institution, and truly how much he is going to be missed here. There are a lot of people who come in and leave, and you go on the next day when they are gone, and maybe you will forget. But this is a gentleman who will not be forgotten, Mr. President. His name will long be revered; his legacy will long be with us.

I somehow feel a little bit strange also, because I feel like I have just been sitting here for the last 15 or 20 minutes listening to a lot of funeral eulogies. It is almost like we have just had a death in the Senate. I can say that this man has had an impact, not only on the Senate, but he has had an impact on my life. He has had an impact on this body and this institution. He, in my opinion, is one of the very, very best to ever have been a Member of the U.S. Senate. Senator HEFLIN of Alabama a moment ago, said that he has "a great computer mind." I certainly do not challenge that.

Mr. President, in addition to that, KENT CONRAD has probably one of the most magnanimous and generous hearts of anyone that I have ever had the privilege of serving with in this body or knowing.

In closing, Mr. President, I spent about 11 years as a Member of the Senate Ethics Committee, and I can tell you that we had some of the most wrenching decisions during that period that I have ever faced, or ever had to face. People now are trying to decide if we need to reform the ethics process, and everyone is hammering the institution of Congress like never before. But down deep in my soul, I have always thought that if you could just have a one-man Ethics Committee, or a one-man committee, to say what was right and what was wrong, or what we should do and what we should not do, if I had to choose that person, I would have always chosen the Senator from North Dakota, Senator KENT CONRAD.

He would have been my candidate, because I think he represents the best of what this system is about. I think he represents the soul of the U.S. Senate. This institution is going to be a lot worse off without him.

Mr. President, I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

SENATOR CONRAD'S ANNOUNCED RETIREMENT

Mr. BAUCUS. Mr. President, I learned only 15 minutes ago of the stunning news that KENT CONRAD will not be seeking reelection. Like other Senators who have spoken before me, I, too, am basically at a loss for words. Senator KENT CONRAD is one of the great ones here. He may not be well known around the country, but he is well known here among his peers, among his colleagues. We know he is one of the great ones.

He is one of the great ones for the reason suggested by the Senator from Arkansas—his integrity. I know no Senator of higher integrity than KENT CONRAD. His word is his bond. His intelligence. He cuts through to the core faster than any other Senator I can think of.

His commitment to his people, to North Dakota, his tenacity, whether it is on the Missouri basin drawdown, whether it is agriculture, Durum wheat producers, or other agricultural interests in North Dakota, KENT is in there fighting more effectively than any other Senator I can think of. He is a believer. He is here, and has been here, for the right reasons. He is one of the great ones.

Other Senators have mentioned his personality and his generosity. I have always marveled at how upbeat KENT is when you walk up to him. When he sees me, and says, "Hi, Max, how are you," he is always cheerful, upbeat, and optimistic about solving problems and getting things done.

I was not here when KENT gave his statement, but I understand he said he was retiring, in part, because the budget deficit is not lower now than when he began. Mr. President, KENT put together the budget deficit reduction task force. He has been trying to get this institution, this body, along with the House and executive branch, to reduce the budget deficit. I know no Senator who has worked harder at it, and no Senator can do it alone. He is not the President, but in many ways I wish he were. He cannot control the House. He has worked harder at trying to reduce the budget deficit than any other Senator.

He is one of the most personable people I have ever had the privilege to know. He is wonderful; he is terrific. Other Senators have mentioned about the loss to the country because of KENT's decision. It is true.

This body, this country, is losing tremendously, because it will not now have KENT's service in the Senate. But knowing KENT, I cannot help but believe that we have not seen the last of KENT CONRAD. KENT will serve North Dakota. He will serve our country. You just cannot bottle up that intelligence, integrity, and that commitment for service. He was, earlier, the tax commissioner of North Dakota. He has been a Senator now for 6 years.

I just know that KENT, whatever he does, will be serving us in other capacities. I very deeply regret that he is not going to be here with this institution, at least not for the time being.

I am stunned, I am flabbergasted, and I am saddened, like all Senators. I just cannot think of another person who is a better person than he, or another Senator who is a better Senator than he. But I do know, knowing KENT, that he is going to go onward and upward in whatever he does.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

EXTENSION OF MORNING BUSINESS

Mr. KERRY. Mr. President, I ask unanimous consent that morning business be extended beyond the time of the Senator from Nevada, so that I might have my full 45 minutes.

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

Mr. KERRY. Mr. President, I ask unanimous consent for a couple of minutes, if I may, outside of my time to address the retirement of Senator CONRAD.

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

SENATOR CONRAD'S RETIREMENT

Mr. KERRY. Mr. President, I have listened to each and every one of my colleagues, and like everyone, I think I feel like the entire Senate has had the wind taken out of its sails today.

There are a lot of messages in KENT CONRAD'S announcement today. One is certainly our failure, because KENT CONRAD would not be retiring, and we would not be losing his talent, if we had completed that third part of his three-part promise, which was to do something about the deficit. The saddest part of it is that no one, or perhaps very, very few people in the entire Senate has done more, been more focused, been more persevering, or more determined to do something about the deficit than has KENT CONRAD.

So there is a bitter irony in the fact that he retires for our failure as an institution, and so we lose his talent.

In addition to that, there is another message which is characteristic of KENT CONRAD, and is probably the most important part of what he is saying to us, which is: Keep faith with your own words and your own promises. In doing that today, he has made a gigantic personal gesture that goes an enormous distance to saying to the American people that there are people in this institution who are willing to keep faith with their word, and it is just a tragedy that the topsy-turviness of politics today, and where we are, finds us in a situation where a guy has to retire in order to send that kind of message.

I am going to miss him enormously. Many a late evening out here on the floor he and I sat and chatted, talked about budget deficit reductions, about frustrations in this institution.

Two or three of my people on my staff went to North Dakota and spent the last days of his campaign, campaigning with him, to help bring him here. I remember the phone calls back to me about this bright, capable person who was bringing a strong message and was going to be just terrific down in Washington.

I never would have thought that so soon he would be leaving. I think the best thing we heard today is that he is indeed a young man and the possibilities for his participation in the future are obviously significant. So I join with my colleagues in wishing him nothing but the best, in applauding and expressing awe at the very significant statement that he has made to the country today. I know it will be much appreciated even as it is received with a lot of sadness.

(Mr. GRAHAM assumed the chair.)

Mr. KERRY. Mr. President, I move now to use the time that I have asked for in the special order. The reason that I rise today is that I want to talk about a subject that is complicated. There is nothing easy in discussing it, but it is important. I think it is the most important subject that we face today in America.

I gave a statement in New Haven, CT, a few days ago, the key points of which I intend to repeat here this afternoon. I do so for the sole purpose of trying to help jump-start the debate about the crisis in our cities.

I do so because I think it is essential that we rise above the past prejudices and the divisions in this country in order to clearly focus on the future of our urban neighborhoods and the relationship of that future to the rest of the needs of this country.

In so doing, it is my intention to make common cause with the families, with the teachers, the individuals, the civil rights organizations, the community organizations and police and public officials and others in my own State and around the country who have literally never stopped struggling to save America's cities. These people desperately need our help today, and they are not getting it. And I intend to talk as frankly as I know how about why I think it is that we are not giving that help and how important it is for us to build a consensus in this country that will provide that help.

In this Presidential election year we are inundated with the trivia of politics. But I think that most of us here would admit that we are deprived of the essence of what politics is supposed to be about. Politics, at its very best, is not just about a media horserace or about photo opportunities. The politics that most interests us and matters to us is not separable from the day-to-day reality of life.

For a lot of us here in Washington, that reality of life is a reality that is bolstered by family, by self-esteem, by confidence, in many cases, and opportunities for the future.

But there is another part of America, Mr. President, where that reality is totally different. In too many neighborhoods of too many of our cities, there exists a violent drug-ridden, crime-corrupted reality, a reality in which many of the institutions of our civilized social life have broken down, where in some areas more than 80 percent of the babies are born to single mothers, where young men die violently at a rate that exceeds that of any war in the history of the United States, where only one child in three finishes high school and even then too often, can barely read; where the spread of AIDS and homelessness rips so visibly at the fabric of community; where far too many families are on welfare for far too long; and where far too many children carry guns instead of lunch boxes to school.

Sadly, we have always had poverty in the United States of America. We know that. And we have always had violent crime. And we, even since the earliest days of this country, have had problems with alcohol and drugs.

But I think it is fair to say we have never seen in America the kind of problems that we see in our worst urban neighborhoods today.

We have never seen children talk matter of factly about blowing each other away or about living in a world where guns are as common as water or about going to sleep at night and waking up each morning with shooting or getting shot the first thing on their minds—each of these real conversations.

We have never seen an America where a 2-year-old girl could be found at a day care center with 11 vials of crack in her pockets thinking that they were candy or where a kindergartner could find a gun in a stroller and use it to kill his little sister.

We have never tried to raise children in an environment where the glorification of violence in movies and music has such immediate relevance to so many; where Hollywood tries and tries but cannot out-shock reality; and where some rap musicians celebrate murder in cold blood while murder records are broken every year.

Today, this land of the free that we celebrate proudly has the highest incarceration rate of any nation in the world; we imprison black males at five times the rate of South Africa; and a violent crime is committed in or around one of our schools every 6 seconds.

I think we have to be honest about this and I think it is time for us in the U.S. Senate and elsewhere in this Nation to debate why this is happening. A lot of people would like to believe that it is not happening, or some people hope that if they are very careful in how they lead their lives urban devastation just will not touch them, or people have concluded that there is nothing that can be done about it. Or they believe it is everyone else's responsibility but their own or our own. So we have adopted, I think, a kind of national policy of rationalization and avoidance and, frankly, in many cases worse still—exploitation.

The responsibility for this policy of neglect rests right here in this city, not in those neighborhoods, and it begins here in this city with the President and the Vice President who have done literally nothing to help our cities in 3½ years, a President and a Vice President who ridicule welfare recipients, encourage racial divisions around the welfare issue, and avoid the reality that there are more whites in America on welfare than there are minorities. They declare proudly as if it were a badge of courage that they will do absolutely anything to get re-elected. But the responsibility goes beyond just them; it falls on other politicians in both parties who seem unwilling to tell the American people anything except what the American people want to hear.

No question, there are some noteworthy exceptions to that. One of them is our colleague, Senator BILL BRADLEY, whose thoughtful and intelligent statements on race and the American city have been important contributions to this effort; the most recent example being the statement he made last week.

It is fair to say and most would agree that these issues are not easy to discuss. They are at least as controversial as discussing the relationship between men and women which caused the Nation and the Senate so much agony during the Thomas hearings last fall. There is so much sensitivity about these issues, so many ways to be misunderstood or taken out of context that I am tempted to heed Mark Twain's warning that it is often better to keep one's mouth shut and be thought stupid than to open it and remove all doubt.

Mr. President, we cannot advance, we cannot change things and focus on the cities or an urban agenda or understand the needs of this Nation if we are not willing to say honestly what is on our minds; if we do not at least begin a real dialog in this country.

So despite the risks, I feel compelled to state my conviction that America is not going to be livable, it is not going to be safe, and it is not going to be the kind of America we want it to be unless we are able to remake a consensus in this country for social activism, and unless we can find a way to save our cities and provide more hope and opportunity to the people who live in them.

There was a time not long ago, and I think back to the time when I came into politics in the 1960's, when the mere mention of poverty and suffering would have brought forth a strong response from much of our society. There was a time when we felt as a people, that we could broaden the circle of opportunity, and it could be expanded outward and outward indefinitely until it included all the people of this country.

There was a time when I think it felt natural, perhaps even second nature, to pursue change and to believe in the possibility of achieving it. There was even a time when we had enormous faith in our Government and in its ability to design and implement programs that would really work.

But today, as you look around us—and just listening to my colleague KENT CONRAD, and to each of the comments about KENT CONRAD—it is very obvious that there is an awful lot of cynicism around. Too many are fed up with a Government that simply is not working, paralyzed by the rivalries between a Democratic Congress and a Republican President. Too many are skeptical, after decades of scandal and waste, that any Federal program will achieve its goals, even if we agree that the goals are important. Too many people have become fatigued by the constant appeal to our compassion and generosity, not only from within but from outside our borders, and we are conscious that we lead the world not only in military power, but in debt, as well.

Despite these concerns, I really think that most of us know, deep down inside, if we stop to examine it, that we cannot continue on the road that we are on. We understand that we are not going to be competitive internationally if too many of our young people cannot compete at all.

We are simply not going to get out of debt if we have to continue on an endless cycle of allocating billions of dollars each year for more prisons, for emergency health care, for more prosecutions, for more drug rehabilitation—as little, incidentally, as we have been willing to give to it—and for added security and expanded welfare roles. And I think everyone knows that no amount of locks, no metal detectors, no surburban fences are going to protect people and our families from what has become by far the most violent industrialized society in the world—that is, us.

And there is no amount of rationalization that will allow us to remain indifferent to the suffering and the unfairness of what is happening in our cities today, and what is happening especially to young people in those cities.

Now 27 years ago, our Senate colleague PAT MOYNIHAN warned us that:

> From the wild Irish slums of the 19th century eastern seaboard, to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history: a society that allows a large number of young men to grow up in broken families * * * never acquiring any stable relationship to * * * authority, never acquiring any rational expectations about the future—that society asks for and gets chaos. Crime, violence, unrest, disorder—most particularly the furious, unrestrained lashing out at the whole social structure—that is not only to be expected; it is very near to inevitable. * * *

Let me emphasize that he said, a society that allows it to happen. And I emphasize that I am addressing this to a society that is today allowing it to happen, to us, who are allowing this to happen.

Today, you can read it in any newspaper almost on any day, urban gangs literally seize young people from their mothers before they turn 10. We were in touch recently with the Los Angeles police to talk about a whole new wall that is covered with the names of the young who are killing each other in the gangs in that city. How has this happened?

The trends that PAT MOYNIHAN spoke of were barely beginning a quarter of a century ago. How is it that in the short span of 27 years this phenomenon of disintegration and violence has overwhelmed communities and created new and dangerous cultures?

The questions themselves intimidate—so much so that people avoid asking them. And I might add that in the last few days I have well learned why it is that some people avoid asking them. How is it, for example, that since 1965, the percentage of black children living with both parents through the age of 17 has gone from 50 percent to 6 percent? But this is not a trend exclusive to the black community. And it is not exclusive even to minority communities. The comparable figures for white children in this country, after all, are 81 percent to 30 percent. The trends are the same. It only seems worse in the minority community because the starting point is so much lower and because the impacts of social change always seem to hit hardest at the most vulnerable in our society.

So, Mr. President, we better ask ourselves whether this social disintegration is merely the result of upside-down budget priorities, or a part of the Federal and State governments, or whether it is primarily the consequence of lost industrial jobs, or whether it is simply part of a larger trend of deteriorating values that has struck all sectors of our society to some degree.

We must even consider whether it is the result of a massive shift in the psychology of our Nation that some argue grew out of the 1960's—a shift from self-reliance to dependence, from caring to self-indulgence, from public accountability to public abdication and chaos.

Now, I cannot answer these questions with any completeness or certainty. I doubt that many of us here can, but it is absolutely clear to me that the bleeding has gone on so long that there is now no single remedy, there is no magic wand.

Our long-term goal has to be to restore the entire institutional fabric of many of these communities, and no less than that will get the job done. That means dealing with every single

aspect of community—parenting, the schools, child care, housing, youth sports, counseling—all of the things that have been sucked away over the course of the last 15 years and more, all of the threads in the fabric. And the alternative to that is to simply continue to do nothing, which is what is happening now, and then to watch things deteriorate around us, watch things get worse, and watch the bigots and the racists exploit those activities that happen and make it even harder to get things done.

Now, clearly, Mr. President, there is a starting point. Different people in the Senate may differ as to what that starting point is. But there has to be a foundation upon which you can literally create and lift the self-esteem of those people who are now without hope.

What is that starting point? Well for me, the essential building block begins with two or three things. Certainly good jobs, productive jobs, the transfer of economic power to these communities. Something we have talked about and talked about, but which we really have not engaged in in this country. And, obviously, there has to be an increase of good job skills to go with these jobs.

And there must also be a restoration of public order in these communities. I cannot think of anything better for our country than to design such a program and make it work.

Now there are obstacles to doing this, Mr. President. There are many obstacles. Some neighborhoods and some people are so wracked by drugs and crime, so beaten down by the system that they may well be beyond help. And the economic forces that robbed our cities of the industrial and manufacturing jobs are sadly growing stronger, not weaker. Most businesses, you can talk to any CEO, are simply not prepared to move into the poorest neighborhoods.

And we are up to our eyeballs in red ink, making it harder to make some of these choices. But I must tell you that I think towering above each of these obstacles, restraining us from addressing many of these issues, is another more serious obstacle, and I believe that obstacle is America's unwillingness to confront the issue of race.

Tragically, the fact is that the majority of the white majority in this country does not want to invest more of their scarce tax dollars in minority neighborhoods or what many believe to be predominantly minority problems.

Tragically, too, the crisis in our urban centers has come to be viewed by many people as simply a question of us versus them, thereby preventing real dialog and real progress.

It would be simple to blame all of this on racism. And there is no doubt—and I want to say it as clearly as I know how—that there is a persistent, cancerous level of racism in this country. It is ugly. It is insidious. And it is present everywhere—in housing, education, and employment. And we, all of us, need to do more to point out that racism and to fight it. We need to show stronger leadership and to reach out for our better, not our baser, instincts.

But the issues and the reasons for our dilemma, frankly, are deeper and more complex than just that. They have their roots in the changing nature of the movement for civil rights, in the turbulent history of race relations, and in the persistence of racial stereotypes.

Thirty years ago, a supporter of the civil rights movement could agree with John Kennedy that the proposition that "race has no role in American life and law" is a "moral issue as old as the Scriptures and as clear as the Constitution." But for the past two decades that same movement has had to depend on laws and rulings that have, by necessity, focused on the role of race in American life and law.

Where once Martin Luther King could depict the struggle for equal rights as a mighty battle between good and evil, a battle where club-wielding sheriffs and attack dogs squared off against peaceful marchers and hymn-singing children, today the civil rights struggle is fought principally in the courts, and the winners and losers are determined by rules that many Americans simply do not understand or that they do not fully accept.

That is one kind of progress—to get to the courts. But is has also deprived many Americans of the images that brought them to the consensus of the civil rights movement, images they easily related to. And it has replaced them with images; that is, lawyers in court, that they love to hate.

It has also inadvertently driven most of our focus in this country not to the issue of what is happening to the kids who do not get touched by affirmative action, but it has driven most of the attention of this country toward an inherently limited and divisive program which is called affirmative action.

I want to be careful here. I say "limited" because by definition it only reaches a fraction of those who need help. And I say "divisive" because all of the data currently show the degree to which people receive it with some resentment—albeit at different levels in different places.

I want to be clear here. I do support affirmative action, not rhetorically, but really. Affirmative action has opened doors for women, for countless minorities, for persons with disabilities. It has helped create a large, growing black middle-class in America. It has helped minority businesses. It has opened up bastions of prejudice like the Alabama State Police which had no black members at all in a State that is 30 percent black.

It has caused employers to rethink the standards and tests that they use to qualify people for employment. And it has given the benefit of the doubt to diversity over uniformity on campuses and in workplaces across America. It has, in short, made our country a better, fairer place to live. And this is an important positive side.

But there is a negative side. I think in the interests of building a new consensus in this country we have to be willing to admit that. We have to be willing to acknowledge publicly that, just as the benefits to America of affirmative action cannot be denied, neither can some of the costs. Those costs are illustrated by an astonishing recent poll, a poll taken by the People for the American Way, and released a few days ago.

That poll shows a majority of whites—this is incredible—but a majority of whites believe that it is they, not minorities, who are most discriminated against in America today.

Mr. President, I ask unanimous consent that this poll be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. KERRY. But clearly, Mr. President, we, as Senators, all of us in public office—and I might note particularly us in the U.S. Senate where we are a white institution—we have an obligation and a responsibility to do everything we can to correct whatever false data or preconceptions have fed the belief that is evidenced in this poll. But I also say that we have to think hard about what it means.

We have to think about the obstacle that it creates to interracial communication and understanding, about the obstacle it creates to opening additional doors of opportunity for all minorities, and about the obstacle it creates to majority support for future investment in our cities and to those who live in them.

Too many politicians—many of them in my own party—have not acknowledged the obstacles, or even the downsides, for fear that somehow it will rip at the reality of the need for affirmative action. By that failure I believe that we send a message to many of those who feel alienated or abandoned by their Government that we simply do not care about them, that we do not realize it is they—far more than we who make and interpret the law—who have borne the burden of compliance with the law.

If we do not change that message, if we do not at least communicate our understanding that there are two sides to this issue, then we are going to forfeit our opportunity to remove the obstacles and change the attitudes through dialog and explanation and appeals to reason. Once that opportunity is truly gone, our hope for real progress will be gone with it.

Some people have asked me why I feel the need to even mention the

words "affirmative action" in the same context as a speech on the urban agenda. And why do I talk about white resentment in this speech? I will say why very simply, I believe we cannot change the consensus in this country, we cannot build a new consensus to deal with the problems in the cities, if we cannot change attitudes. And if all we do when sensitivities arise is change the subject, we are in trouble.

In 1964 when the Civil Rights Act was being debated, Senator Hubert Humphrey assured reluctant colleagues that nothing in the bill would "require hiring, firing, or promotion of employees in order to meet a racial quota or to achieve a racial balance." But the controversy that Senator Humphrey sought then to put to rest remains with us today, not only by legislation but by administrative order and court decree—a whole apparatus, which is bewildering to some, of rules and guidelines has been constructed. Somewhere within that apparatus, conjured up to fight racism, there has emerged a perception and a reality of reverse discrimination that has actually engendered racism.

I want to make it clear that there is no question in this Senator's mind that that reality has been exaggerated by subjective perceptive and exaggerated and exploited by policians eager to use it. But out of that reality has come a real resentment which is reflected in the poll I referred to earlier. And it is reflected in most of the literature on the subject of race today. And I think that that resentment, unattended to, undiscussed, is dangerous and it is widespread today. It is a resentment that is fed by a lot of different images and memories, many of them incorrect, many of them insensitive. But it comes, I think, out of our history, if you will, with this issue.

As I have said, I do not believe that this issue of white resentment can simply be dismissed. If we truly care about racial progress and about our cities, then we have to rebuild the consensus that will make a difference to those cities. We cannot equate fear of crime or concern about deteriorating schools with racism and then expect those we have called racists to turn around and invest in the very neighborhoods they have fled.

We cannot lecture our citizens about fairness and then disregard the legitimate questions they raise about the actual fairness of regulation or law. We cannot deride as politically incorrect the anger of taxpayers who work hard to support their families and then find themselves supporting other families who have been on welfare for several generations. They simply are going to feel that anger, and we just cannot say, "Sorry, but you don't feel it; it's not there."

This is not a speech about affirmative action. It is a speech about our cities. But I do not think that we can get to the agenda of the cities without being honest and breaking down the barrier of the us-and-them syndrome that is sweeping this country.

Again, I do not want to be misinterpreted. We have established in corporations, in educational and governmental institutions, a strong and an appropriate program of outreach called affirmative action; a program of goals, not of quotas; a program which provides real opportunity. I do not want to tamper with it because it is vital to our battle against discrimination. But you cannot just leave it there.

There have been problems in the past in the administration of the program with actual quotas, with race norming, for example, and some people have exploited the resentment that was felt about those kinds of policies. And out of that has come a broader sense in peoples' minds: "Hey, the system is rigged, and it ain't rigged for me; it's rigged for them." And that is what has built up a large body of resentment.

It is my belief that we in the U.S. Senate reacted to that when we passed the civil rights bill last year and outlawed quotas and race norming. But by doing so, we acknowledged the reality of the fact that the resentment was there and the resentment was real, and there was a need to do that. The reality is today that the negative feelings linger on.

Our legislative action has not caught up to the rest of the country yet. The perceptions that created the feeling of resentment came out of years of this policy, and in the few months since we have tried to address those issues, that has not been eliminated.

I think that is why if we are really going to make future progress on this issue of the urban agenda and of creating a real dialog on the issue of race, we have to educate the public about those changes.

We must also recognize that prejudice does flow in more than one direction. While reaffirming the truth that minorities and especially blacks continue to be harmed most by the cancers of bigotry and prejudice. We must explain clearly that, because the benefits of affirmative action do relatively little for those within our minority communities who are in the greatest need of help—we must go beyond it if we are ever to have real racial justice in America, and if we are to make good on our Nation's most sacred promise of equal opportunity for all.

Finally, we—all of us here—must challenge the politicians who make it their business to exploit the enormous resentments that are out there today and who spread false or simplistic information about these issues.

The time has come to stand up and say to President Bush and to candidate Buchanan and to David Duke and to Al Sharpton that we are not, in the United States of America, going to fall for their pandering and exploitation anymore. We are not going to let them divide us. We are not going to play the role of victim anymore. We are determined instead to reach out to each other not on the basis of race, but as Americans, in order to narrow the divisions and to begin a process of healing and understanding and communication.

We have to do that in order to get beyond the finger pointing and the blamemaking, and in order to move beyond the us versus them problem so that we can recognize that there is no us and them; it is we. It is we, and these cities are our concern, and we have an obligation to develop and implement a serious agenda for urban revival and shared progress.

What is that agenda? For me, it begins by waging war on two myths. The first is the Democratic myth that merely redistributing wealth will create wealth; and the Republican myth that Government cannot be a force for positive change. In their place, we ought to substitute a new version of the social contract where every right is matched with a responsibility, and where rapid inclusive economic growth is our overriding goal.

I think to do this, obviously it will require investing in our people in a way that, to the best of our ability, avoids the crippling perception of racial favoritism, an approach that accepts William Julius Wilson's view that "in the last few years of the 20th century, the problems of the truly disadvantaged will have to be attacked primarily through universal programs that enjoy the support of a broad constituency."

The agenda begins, in my judgment, with the simple restoration of order, a serious and sustained effort to step up the battle to reclaim our streets and our apartment houses and our neighborhoods from the criminals and gangs who literally control so many of them, either physically or by intimidation.

Let's not kid ourselves. We are not going to rebuild our cities if we are so worried about intended or random violence that we are afraid to go into them.

The Department of Justice tells us that 83 percent of all Americans can expect to be the victim of a violent crime at least once in their lives. That is simply unacceptable. We obviously cannot live like that, and we have to understand that while crime affects all of us, to a greater or lesser degree, the hard reality is that it hits poor people in the inner city especially hard.

Crime creates poverty. Each murder, each rape, each burglary and each mugging makes it a lot more likely that a business is going to close, that a working family will leave and that an investor will look elsewhere. In this sense, controlling crime is virtually a precondition to any serious attempt at social or economic reform.

I might also point out that urban crime, while much of it is intraracial, is also the single, most deadly poison there is to improving relations between the minorities and the majority of the people in this country. In shaping opinions and in defining behavior, fear will defeat fairness almost every time.

That is why I think we do need to put more police on the streets in this country, not to create an endless cycle of putting people into jail, but literally to reclaim the tranquility that is a prerequisite to social progress.

A generation ago, there were three times as many police officers as there were violent crimes. Today, we have three times as many violent crimes as we have police. In Boston, just to cite one example, budget cuts are reducing our police to the lowest level in 5 years. That's just crazy. In the face of a persistent and deadly assault, we are literally disarming ourselves.

The anticrime bill approved by Congress but opposed by the President is far from perfect, but it does include the plan we approved here overwhelmingly to establish a police corps that could add 20,000 young people annually to police forces around the country. That, plus increased Federal support for State and local law enforcement, would do far more to combat crime than the President's demand for 57 flavors of the death penalty.

By putting more police on the streets, we can help reestablish community order; we can help remove the most destructive force in our cities today, which is fear; we can help the broad array of urban ethnic groups gain confidence in each other; and by deterring and detecting and punishing crime, we can help provide a shield behind which drug rehabilitation, teen centers, counseling programs, and the simple basics of family life have a real shot at success. That will be good for minorities, for our cities, and for our country.

The second thing we must do is help directly those we have the greatest capacity to help—the infants and children who have not yet assimilated the harshest lessons of the city and not yet accepted the limits on their abilities or expectations. The time has come, after years of delay, to make a real commitment to prenatal care, to infant nutrition, to child immunization and finally, to fully fund Head Start—immediately. For those who say that costs too much, I point out the obvious, that we'll get back every dollar three or four times over in reduced costs for drug rehabilitation, law enforcement and the construction of new jails. None of this is to ignore all the other things we need to do to enhance our elementary and secondary schools, but we must begin somewhere.

Third, we must go into our cities and help the courageous people who have never stopped struggling to rebuild the basic institutions that support community life. Head Start or not, kids without real families get crushed if there is no place to go after school or at night or on the weekends or in the summer. They need role models that are closer to them than the star athlete and better for them than the local drug kingpin.

While preparing this statement, I thought about simply repeating my prior call for a new domestic Peace Corps: But that is not what we need. We need an army of civilian volunteers to involve themselves in these communities. We need a professionally organized and run institution that serves to train and teach and discipline its own recruits while carrying out public service missions primarily in urban America. We could begin with a core of experienced people from our down-sized Armed Forces. We have been willing to spend billions to keep our troops deployed in dangerous spots around the world. Now, rather than rewarding them with unemployment, let us put them to work confronting the new threat here at home. And we can build on that core with recruits from all walks of life who are willing to teach, to counsel, to run academic and recreational programs and to help rebuild some of the hardest-hit neighborhoods in our country.

There are no guarantees, but if anything would give disadvantaged kids something real and good to emulate it just might be an organization whose members themselves are tough without guns, disciplined, drug-free, of diverse backgrounds and reaching out to them every day on their own home turf.

Fourth, we need to continue replacing entitlements with incentives in every State and Federal program we can. We are already requiring the able-bodied on long-term welfare to seek work or to accept training that will give them the skills they need to work—but we must fund that training more adequately and do more to generate suitable jobs. We should also provide incentives for corporations to find summer jobs for kids who stay in school and stay off drugs. We should set strict standards for participation in youth job training programs so that we can be sure to help those with the strongest drive to help themselves.

And we should enact the legislation that is now pending in Congress to guarantee college opportunity to every child in America who has graduated from high school and who wants to continue his or her education.

Fifth, we need an all out integrated program of economic development and growth, I, for one, do not accept the view that America can never again hope to compete industrially; the fact is—we haven't tried. Urban enterprise zones have been on the drawing boards for decades, but never made a reality. The President's capital gains proposal is a joke; but job-creating incentives for the startup, modernization and expansion of companies are urgently required. A Teacher Corps that will encourage our most talented young people to work where they are most needed is long overdue. Microenterprise loan programs can be designed to help the jobless and other low-income people establish themselves as entrepreneurs. And partnerships between American firms and their counterparts in Eastern Europe, Asia and the former Soviet Union can open huge new markets for American goods and services overseas.

Finally, as public officials, parents, teachers or just plain friends, we have to get the message across to all our citizens that the barriers of poverty or unemployment or hard luck or even racism do not excuse behavior that is both self-destructive and harmful to our national community. Even the most disadvantaged of us have choices. Explaining aberrant behavior on the grounds of poor family circumstances is one thing; excusing that behavior is another.

This may seem to hard line, but remember who suffers most when children literally get away with murder because of their age; or when students are allowed to drift through school without learning or even trying to learn; or when teenage girls are left pregnant and alone; or when a public housing unit is turned into a crackhouse. This hurts all Americans to an extent; but it crushes the people who live next door.

I know from experience in Boston and the other large cities of my State that there are thousands of decent honest and struggling families in what we call disadvantaged neighborhoods—families too determined, too proud, or too poor to move. And there are hundreds of organizations and individuals on the front line every day, struggling against the tide.

If you are looking for true heroes in America, many of them are right there, trying against all the odds to keep their kids straight, working two and three jobs to make ends meet, trying to hold communities together that have long since been declared dead by a media more interested in the trauma of crime than the drama of daily life. Make no mistake, we do these families no favor when we are permissive toward criminals or drug peddlers. We also do no favor to those who are in trouble, for their only hope in the long run is to change the kind of choices they make.

To restore respect for values, we must restore respect for authority and that is going to take some time. After a decade of dozen digit deficits, Government scandals, insider trading, greed, callousness and the self-destruction of everyone from John Sununu to the evangelist Jim Bakker—the ques-

tions of who has a right to preach to whom is in grave doubt. Lectures about sexual responsibility, hard work, honesty and abstinence from drugs impress few when given by representatives of institutions that are thought to reflect none of those qualities. A Government that continually ducks hard choices can hardly blame adolescents for doing the same.

I do not have the time today—or perhaps in what remains of this millennium—to prescribe a full remedy for the public's alienation from Government, but a serious approach to the problems of our cities and of race and racism would be an important step in the right direction. That, alone, will require a great deal more honesty, creativity, leadership and courage than we have seen in recent years.

But the burden does not fall solely on Government. As individuals, we have to face our own responsibility—a responsibility, first of all, to understand that there is nothing abstract or theoretical about any of this. We are talking about real children dying, not halfway around the world, but literally right next door, yesterday and today and tomorrow, and there is a pretty strong impression out there that nobody really gives a damn.

I think also we must, all of us, raise our sights. We have to look beyond the immediate troubles and anxieties, the scandals, and day to day headlines and ask where we are going as a country.

Although we feel awash in a sea of troubles, we are also the first generation in almost a half century entitled to dream realistically about a world free from nuclear confrontation; we have reason to hope for decades without war; we have the opportunity—if only we would seize it—to truly lead the world toward an era of real cooperation in pursuit of individual freedom, environmental protection, human rights and peace.

Against this background, how sad and inexcusable it would be if we were to allow a self-made prison of lowered expectations, cynicism, division and fiscal mismanagement to erode the core of American strength at home.

There is nothing inevitable about what is happening in America today. There is no higher law that says children must be gunned down by children in the street, or that lives barely lived must be lost, or that America's cities must die.

There are no problems that through neglect we have created that by caring we cannot resolve. There are no divisions that ignorance has created that understanding cannot erase. And there is no better time than now for all of us to chart a course of challenge and commitment and constructive rebellion at the status quo.

On Tuesday, a group of us met with former President Jimmy Carter to talk about Project Atlanta, a brilliantly conceived model of community self-help directed at the very problems I have been discussing today. The columnist George Will wrote this past Sunday about the Choice Program south of Baltimore where young adults spend a year working long hours at low wages to provide troubled city kids with the kind of guidance and attention their absent families cannot. In my own Commonwealth of Massachusetts, there is the Youthbuild program and other programs carried out by the NAACP and the local community action agency—the seeds of renewal and revival are out there, but they must be nurtured, they must be given an environment within which they can grow.

The reason I give this speech today is because I am tired, as I think KENT CONRAD expressed a little while ago that he is—and he has decided to leave obviously—but there is a sense of frustration with the unwillingness of this institution to face some real issues.

You pick up the newspaper, the Washington Post, of several months ago; you read about a 4-year-old kid who watches her mother being stabbed in her own back yard at her birthday party, and then announces that never again does she want another birthday.

Or you look at a kid whose mother is shot by a random bullet, and they tell her, well, your mother is a star in the sky. Well, which star is it? That is her life now, looking up in the sky for a star that is her mother.

Or a kid named Charlie Hardison, a young kid I knew in Boston. We helped to send him to the Soviet Union so he could play tennis as part of the Sportsman Tennis Club program for inner-city kids. He was killed by one of those random murders and bullets. He is gone. And there are good people like Jim Smith, who runs that program, trying hard to do something about it.

Last year, I spent some time riding around in the cop cars at night in Boston, watching drugs being sold. I got out and I talked to some of the kids who were selling them, and I asked them about their future. They do not feel they have much future, Mr. President. And unless we face up to the realities of what is ripping us apart in this country—the people who exploit the issue of race; the people who will not deal with these realities—we will simply not make this country what it ought to be and what we know it can be and what we want it to be.

My hope and prayer is that we will face up to our responsibilities. Nothing can be more vital for the future of this country. There is not one of us who has the right to turn our backs on what is happening, and what is happening out there is not abstract, it is real.

These are real people dying, a real generation losing their future, and we are supposed to be real people responding to it.

There is not one of us who has any right to deny that future to anybody else. In fact, we have the obligation to try to make it happen. That is why I give this speech today; that is why I say there is a need for dialog; that is why I say there is a need for action.

EXHIBIT 1

PEOPLE FOR THE AMERICAN WAY, RELEASES GROUNDBREAKING STUDY OF YOUTH ATTITUDES ON RACE

FINDINGS: BLACK/WHITE PERCEPTION GAP; RACIST STEREOTYPES PERSIST

WASHINGTON, DC.—Racial divisions are taking root among a new generation of Americans. That was among the chief conclusions of a new study released on March 17 by People For the American Way. The study is a project of People For and was conducted by Peter D. Hart Research Associates.

The study, Democracy's Next Generation, Volume II, included three facets: a nationwide telephone survey of 15- to 24-year-olds; focus groups of white youth; and indepth, one-on-one, face-to-face interviews with these white and minority "children of the civil rights era."

"Today's findings should send a chilling message to all Americans: ours is a nation divided," said People For President Arthur J. Kropp in releasing the study. "The attitudes of America's youth reflect the tensions and anger of the past decade and the moral failure of our political leadership. Our young people have placed themselves in opposing camps, divided by race, and they tend to believe only the worst about youth of other races."

Principal findings of the study:

Young people have a generally gloomy view of the status of race relations in America.

Fifty percent of American youth describe the state of race relations in America as "generally bad," compared to 42 percent who take the opposite view.

In the words of a young black woman interviewed, "I would say it's kind of bad. . . . In my community or with the people I hang around, there seems to be tension between white people and black people."

A gaping perception gap between whites and minorities has opened on issues affecting economic self-interest.

A plurality (49 percent to 34 percent) of white youth perceive that it is whites who are denied opportunity by discrimination in America; most minority youth (68 percent of blacks, 52 percent of Hispanics) feel that it is they who are discriminated against.

A majority of whites oppose programs that provide special employment opportunities to minorities (65 percent oppose); black Americans generally favor such programs as a means of redressing persistent discrimination (60 percent favor).

A young white woman told an interviewer: "I'm going to be going to college soon, and I don't want to be turned down because I'm white."

A young black woman takes the opposite view: "Because whites have had an advantage and upper hand on things for so many years, I think it's a very good idea to have financial aid and special considerations given to minorities so they can have the chance whites have."

Some young whites cling to ugly racial stereotypes of minorities.

White youth in one-on-one and focus group interviews volunteered such stereotypes of minorities as "lazy," "welfare-dependent," and "criminal."

Says one young white man: "They stay on welfare too long. And they seem to take their problems out on whites."

A young white woman: "They are lazy and it would be better if they weren't doing drugs."

Another white man: "Blacks don't appreciate what we've given them."

"The central findings of this inquiry are cause for great concern," said Geoff Garin of Peter D. Hart Research Associates. "It is hardly a time for complacency when majorities of both races say whites and blacks feel uneasy dealing with one another, and hardly a time for self-congratulation when the best educated young black people are the most cynical about the sincerity of white America's commitment to the elimination of prejudice. The findings point to the need for active and determined leadership—leadership with the courage to do what's right, rather than merely expedient."

"We know we must find a new way to talk about race in America," said Christopher Edley, Jr., Professor of Law at Harvard University and a member of People For's Board of Directors. "When the language of 'rights' and 'justice' is appropriated by the David Dukes and the Pat Buchanans, it is time for us to sharpen and redirect our message. The study gives us a head start."

The study also found what Kropp described, as "the building blocks of positive change in America's racial attitudes":

A strong interracial consensus on such core values as family, personal responsibility and fairness unites young people of all races.

Youth of all races agree that the three most important factors for success in life are education, hard work and a fair chance.

Most young Americans see their generation as part of a slow march toward progress on racial problems.

Fifty-five percent believe race relations are "getting better." Youth by and large believe they have healthier attitudes toward racial issues than do their parents.

Most young Americans have significant personal interaction with people of other races, and by and large, they describe those interactions as positive. More than 70 percent of all youth say they have a "close personal friendship" with a person of another race.

"The finding that so many youth have friendships with people of other races was very encouraging," Kropp said. "But it also pointed to an alarming conclusion: for whatever reason, many young people evidently regard their friends of other races as exceptions to the rule. Rather than generalizing from their own one-on-one experiences, they accept stereotypes or generalize from less intimate experiences. The result is that these young people cling to stereotypes, all the while maintaining personal friendships that fly in the face of those stereotypes."

"Perhaps the most encouraging finding from this survey," Kropp concluded "is that youth of all races seem to agree on a shared set of values. They all regard family, personal responsibility and fairness as the foundation of a moral life. Moreover, they all agree that education, hard work and a fair chance are the keys to success. This consensus on basic values suggests to me that the most important elements for meaningful change are already in place."

"We are here," said Edley, "to issue a challenge to every American who is in a position to reach young people: help us forge a new moral consensus on race relations, beginning with the next generation of Americans."

People For the American Way is a 300,000-member, nonpartisan constitutional liberties organization. For more information, for a copy of the complete report, or to arrange interviews, contact the People For Communications Department at 202/467-4999.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is recognized for 10 minutes.

Mr. REID. I thank the Chair.

SENATOR CONRAD'S RETIREMENT

Mr. REID. Mr. President, I acknowledge a heaviness in my heart, as all of us do, as a result of the very recent announcement of our friend and colleague, KENT CONRAD, that he is not going to run for reelection. I have grown to respect and admire KENT CONRAD and his wife. It is going to be a different place in the future without KENT CONRAD. As the history books are written, KENT CONRAD's name will be spread throughout as a result of his service in this body.

The PRESIDING OFFICER. The Senator from Nevada retains the floor.

(The remarks of Mr. REID pertaining to the introduction of S. 2514 appear in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for 5 minutes.

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

SENATOR KENT CONRAD

Mr. LEVIN. Mr. President, earlier today I came to the floor expecting to make a speech congratulating the President on his effort yesterday, on his announcement yesterday, that we were going to participate in an international effort to help protect democracy in the former Soviet Union.

I left the floor because others were talking, and at that moment one of the persons who was talking was KENT CONRAD. The person who was talking was KENT CONRAD, and I did not realize at that time what he was telling us. If I had, I would have stayed on the floor and sought recognition right then to express my dismay at what he was telling us.

I would like to spend a few minutes that I have talking about KENT CONRAD, and what I see the significance of his decision today is for all of us and for the country.

To put it as succinctly as I know how, I have a very hollow feeling in the pit of my stomach. The fact that KENT CONRAD has decided not to seek reelection is a personal blow to me and to my wife Barbara. I know that it is to each of us in this Chamber. It leaves us poorer, weaker, wondering just exactly what is happening, when the best and the brightest among us decide not to seek reelection.

We heard the same kind of news a week ago when WARREN RUDMAN told us that he had decided not to seek reelection. We cannot afford to lose the Kent Conrads of this body, and the Warren Rudmans of this body. The Nation cannot afford to lose them either.

The fact that KENT has decided not to seek reelection has said volumes about him, but I am afraid it also speaks volumes about where we are as a Congress and as a nation. I have watched him struggle with this deficit for years. He has headed up the deficit reduction caucus. In meeting after meeting, he brought in expert after expert to try to educate us as to what we are doing to our children and grandchildren.

He has spent hundreds of hours in a conscientious effort to address this problem, which is a millstone around our necks. It is weighing down future generations. He has been as conscientious as anybody in this body on this subject. Yet, facing the fact that we have not reduced the deficit, and that it has gotten worse. KENT has told us today that he in good conscience cannot seek reelection.

Mr. President, I pray that this decision is right for him and for Lucy. It is wrong for the Nation. It is wrong for the country when we lose someone who has the kind of commitment, and integrity, and decency that KENT CONRAD has. It is wrong for the country.

Maybe some good will come out of this. I hope it will for him, obviously, and for Lucy. But maybe this decision will galvanize us to change the course that we are on, this gridlock course, that what we need to do for the Nation cannot be achieved because of deadlock in Washington between the President and the Congress.

If, in fact, it galvanizes us, if in fact, it shocks us, and it should, into acting not as Republicans and Democrats, but as Americans, to change the economic course of this country, then some national good will come out of this decision. I hope that happens, because that will be the greatest tribute we can pay to KENT CONRAD.

So as we lick our wounds here personally, as we hear that he is going to leave us, let us recommit ourselves to end the gridlock, to end the partisanship, to end the stalemate, to end the deadlock that has existed between the White House and within the Congress, and let us commit ourselves to address the subject which he devoted so much

time to addressing, which is that deficit which is so harmful to the economic future of this country.

I hate to see him go. We are poorer, and the Nation is poorer. We wish him the best, and we admire him to no end for what he is, and what he stands for, and the integrity he reflects not only on himself and his family, but all of us.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

SENATOR CONRAD'S RETIREMENT

Mr SIMON. Mr. President, I join my colleague from Michigan. I was stunned, frankly, when I heard the news. KENT CONRAD, by any measure, is not one of the best known Members of the U.S. Senate but, by any measure, he is one of the best Members of the U.S. Senate.

Nothing has bothered KENT CONRAD as much—referring to my conversations with him, and I did not hear him state why he was not running—as the fact that we are not facing up to our problems, that we are having excessive partisan bickering.

I am not blaming any one person. I think we all share some blame here. But we have to face up to these things.

KENT CONRAD tried to help us face up to these things, and I hope one of the ways we pay tribute to KENT CONRAD is to do precisely what my colleague from Michigan has suggested, and that is to move on our problems and to spend our resources on education and health care, and things like that, rather than the fastest growing item in the Federal budget, interest, which does nothing for anyone.

I thank my colleague for his remarks.

Mr. LEVIN. I thank the Senator. I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

RETIREMENT OF SENATOR CONRAD

Mr. EXON. Mr. President, I listened with interest to the remarks of my friend and colleague from Michigan, and my friend and colleague from Illinois. I, too, was as shocked as both of them that our great friend and talented colleague, Senator CONRAD from North Dakota, surprisingly, to us at least, announced that he was not going to run for reelection.

I was up in North Dakota not too long ago campaigning for his reelection, and I want to emphasize the statements that have just been made by Senator LEVIN and Senator SIMON. He was troubled by the statement and commitment that he made when he ran for this office that if he could not balance the budget, he would not seek reelection.

I told him personally, and I told the media in North Dakota when I was there, pretty much along the same line of the statements made, but not as eloquently as my friend from Illinois and my friend from Michigan, and I tried to explain to KENT CONRAD that had he known what he was getting into, he would not have made that commitment that he made when he ran for the U.S. Senate. He simply did not understand the difficulties that we have here.

I have been here 13 years, and I have been wrestling with the major concern with regard to the deficit, the ever-growing deficit. As one who came out of the Governor's office for 8 years after struggling in balancing the budget in the State of Nebraska each, and every one of those years, I knew that doing that here in Washington was a much bigger task, and as difficult as it was in Nebraska, it was a lot easier than here.

I think probably what discouraged Senator CONRAD the most was that we just never have been making any progress on this. I thank Senator CONRAD for his tireless efforts. Many of us were carrying on before he came and, obviously, because of his decision today, we will have to carry on in the future.

Once again, I join my two colleagues in appealing for the end of partisanship on this matter and recognize that there is adequate responsibility in the executive branch, in the legislative branch, and in each of the parties involved therein, on this very matter.

Interestingly enough, this comes at a time when we started markup on the Budget Committee this morning. At least myself and Senator SIMON, who serve on that committee, will be going back and trying to come to some positive conclusions on that. Unfortunately, from our deliberations in the Budget Committee this morning, I saw more of the same.

Here we are with two major expenditures of the Federal Government today, the defense budget on one hand, and interest on the total debt on the other, the two biggest items. We are not going to be able to cut interest on the national debt significantly until we begin to reduce that debt. Reducing that debt has to be more of a top priority than it has been thus far. I will pledge to work with my colleagues in that effort.

One thing we have to do is realize how hamstrung the Congress is today. We are hamstrung over in the Budget Committee trying to decide whether or not we must go along with the President's recommendations for the defense budget, which reduces about 2 percent from the $290 billion in the national defense budget last year, whether we should hold to only a 2-percent reduction of that, which is minuscule, to an even still minuscule but larger figure, double that 4 percent as proposed by the Senator from Nebraska, and you go over that budget figure. You go on over to budget authority and you will see that the President's numbers call for a magnificent 3-percent reduction in budget authority for 1993 over last year, and the Exon proposal is double that, to 6 percent.

While my numbers are double the President's, Mr. President, I am almost ashamed that we cannot find more than that to take out of the defense budget. I think we can. At least it is a step in the right direction.

I would predict we are going to have a very, very close vote on those Exon numbers in the Budget Committee and I do not know whether they will prevail or not. I simply say if we cannot cut the budget authority from our defense budget by a tiny 6 percent of the total, given the decline of the obligation that we previously had with national defense, if we cannot cut it by that much, then we cannot do anything and we should recognize and maybe throw in the towel in an honorable fashion as did our distinguished and talented colleague from the State of North Dakota.

SENATOR WARREN RUDMAN

Mr. EXON. Mr. President, I have been waiting for a time to make appropriate remarks with regard to the Senator from New Hampshire [Mr. RUDMAN]. I have had a great pleasure working with that talented individual over the last 12 years, and as much as anything else, I guess when I see people like those two leaving our midst, they are leaving because they are frustrated with the process. I suspect that somewhere along the line they are leaving also because they want to be part of an institution that for a long, long time has had some reputation for standing for something, for being something, and at least it was was somewhat respectful on your record to show that you were in the U.S. Senate.

There are wholesale attacks today, broad brushed across the board on anyone who serves in the House of Representatives or the U.S. Senate, and the press—I do not think the people back home believe that—at least the recent job approval ratings for this Senator that came out last week in Nebraska were very refreshing and encouraging to me, but the institution and the honor of serving here is falling at such a rapid rate and we are losing so many talented younger Members at such a rapid rate that I have serious concerns about the quality of people that we are going to be recruiting from both sides of the aisle to serve in the future.

Maybe the process is going through these strains today and maybe that is necessary. I only wish to say that for whatever reason the feeling of the public and the press about the Senate today caused the leaving of Senator RUDMAN or of Senator CONRAD, I only

tell the press, I tell the Senate, and I tell the people back in their home States that a terrible mistake has been made for the good of the country.

Mr. President, I yield the floor.

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

SENATOR KENT CONRAD

Mr. KENNEDY. Mr. President, just a few moments ago, like my colleagues, I heard the news about the decision that has been made by Senator CONRAD to live up to his commitments to the people of North Dakota and not to seek another term. I know in the past few minutes people have pointed out what his position was in the polls and what he had in financial resources and how his campaign was moving ahead and that he probably as much as any Member of this body was confident of the continued trust of the people of North Dakota.

I think when we think of Senator CONRAD the words that are used are a thoughtful, intelligent, compassionate, hardworking, decent individual who represented his State so well.

Those of us in this institution make a great many speeches and sometimes we think people take these speeches as being important. But all of us understand that we are not only legislators in an attempt to try to explain positions, but also I think all of us learn at an early time when we are beginning to study the institutions of this country we have responsibilities as educators as well.

Perhaps we do not do that as well as we should. But certainly KENT CONRAD's decision today is going to be more important perhaps than all of the speeches that will be made in this body for a long, long time. I think it really reflects a number of characteristics of KENT CONRAD, some of which I mentioned earlier, but it also reflects an enormous respect for this institution, the Senate of the United States, because he ran to serve and he ran to try and bring about change in terms of national policy, and he understood that this institution has some voice in the shaping and the fashioning of national policy. He feels as a matter of moral obligation, since we did not take the steps that he had outlined, that he is going to follow the course of action which he has stated to the people of North Dakota.

I think that that comes through with his statement and his decision. And it obviously says a great deal about the individual, the man himself, and what stirs in people's souls, and I think this is a real reflection of the true mettle of the individual.

I think those of us who have had a chance to know him, sense that about him, but now it is demonstrated with extraordinary clarity, and finally I think he reflects an extraordinary respect for the individual voters of North Dakota. His respect for them and his belief in terms of what a public official and elected official and the people that he represents is really all about, because it is really that commitment or that promise that he made to them that demonstrates, I think, as much as anything an extraordinary respect for the individual voters, those who supported him, and certainly those that might not have.

So, the people of North Dakota have lost an extraordinary public servant, certainly probably for this term, hopefully not down the road to the future, and I think KENT CONRAD has set an example for all those who serve in this institution and for elected officials across the country, and at a time of difficulty in terms of our national debate and discussion at all branches of the Government there is a silver bell that rung today and it was rung by KENT CONRAD and it ought to be a lesson that all of us heed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE ATTENDING PHYSICIAN

Mr. STEVENS. Mr. President, there has been a lot of discussion lately about the Office of the Attending Physician. The permanent staff of the Rules Committee has made a study of the history and the operations of that office. I will ask unanimous consent to insert it in the RECORD and commend it to Members of Congress and to others who are talking about the Office of the Attending Physician.

This does detail its history and what it does, and I think it demonstrates that Admiral Krasner and his staff provide a very vital service not only to the Congress and those people who visit the Capitol but to the staff of the Capitol Police, the pages, members of the Supreme Court, and others who are in need of emergency medical service within the scope of their jurisdiction.

Again, Mr. President, I urge Members to understand the valuable asset that exists in the Office of the Attending Physician and keep that in mind as we deal with the subjects that are before us now.

I ask unanimous consent that the statement prepared by the Rules Committee staff be printed in the RECORD.

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

THE OFFICE OF THE ATTENDING PHYSICIAN

BRIEF HISTORY

The Office of the Attending Physician (OAP) was established in 1928, 70th Congress, 2d session, after the collapse of several Members of Congress and the death of three Members of the House of Representatives. In each case, the arrival of a doctor was delayed several hours. After those incidents, Representative Fred Britten of Illinois, chairman of the House Naval Affairs Committee, consulted Speaker Nicholas Longworth about the placement of a naval medical officer at the Capitol.

On December 5, 1928, Representative Britten introduced House Resolution 253, which passed unanimously that same day. It stated:

"*Resolved*, That the Secretary of the Navy is hereby requested to detail a medical officer of the Navy to be in attendance at the Hall of the House of Representatives during the sessions of the House."

Lieutenant Commander George Calver was assigned by the Secretary of the Navy, Curtis Wilbur, to this position on December 9, 1928. He remained in this position until his retirement in October 1966.

Dr. Calver initially worked in the Democratic Cloakroom and later was assigned office space in rooms H-165 and H-166 of the Capitol where the office still remains.

On June 4, 1929, Senator Royal Copeland of New York introduced Senate Concurrent Resolution 14 to request the Secretary of the Navy to detail a medical officer for duty as physician to the House and to the Senate; and thus, extend Dr. Calver's services to Senators. The measure was referred to the Senate Committee on Naval Affairs, reported favorably (S. Rept. 71-328) in April 1930, and passed unanimously by the Senate on April 7, 1930. It was then referred to the House Committee on Accounts which took no action on it. However, Dr. Calver later stated that after this resolution passed the Senate, the Secretary of the Navy ordered him to "look after both houses." Since that time, the Office of the Attending Physician has been continually maintained for the provision of medical services of Members of Congress.

Although the Attending Physician has always been on the payroll of the Navy, it was not until the enactment of the 1931 Legislative Branch Appropriation Act (P.L. 71-311) on June 30, 1930, that Congress appropriated funds for necessary supplies and equipment in the Office. In its report accompanying this appropriations bill, the House Appropriations Committee stated:

"The contingent fund has not heretofore been available for medical supplies and equipment for the emergency room and physician's office and the committee is of the opinion that some amount should be available for the purpose instead of relying entirely upon the Navy Department for such necessities."

A survey of the Legislative Branch Appropriation Acts since then indicates that expenses for supplies and equipment have continued to be paid from the contingent fund of the House, often listed in those Acts as "Joint Items."

Congress has also appropriated money for allowances for Military Personnel assigned to the Office who have assisted in the office since 1929. House resolution 279, passed July 1, 1930, stated:

"*Resolved*, That until otherwise provided by law there shall be paid out of the contingent fund of the House an allowance not to exceed $30 per month each to two assistants

in the office of the attending physician starting December 1, 1929."

This allowance has been included in subsequent Appropriations Acts and the House has passed resolutions which increased the number of assistants in the office. A more recent practice has been for the legislative branch appropriations act to authorize an increase in the amount of the allowances and the number of Navy personnel who may receive such allowances, rather than the authorizing resolutions.

Since the enactment of the Second Deficiency Appropriations Act of 1940, P.L. 76-668, the Attending Physician and each military member of his staff receives an additional monthly allowance.

In addition to medical personnel, there are two technical assistants appointed by the Attending Physician, subject to the approval of the Speaker of the House. They are on the payroll of the Clerk of the House. A survey of past Appropriations Acts indicated that this position did not exist until the enactment of the 1947 Legislative Branch Appropriations Act, P.L. 79-479. There are also presently 13 nurses on the payroll of the Architect of the Capitol who assist the Attending Physician. They staff the first aid rooms in the Capitol and Office buildings.

Beginning with the 1976 Legislative Branch Appropriations Act, P.L. 94-59, Congress began the present practice of reimbursing the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician. These reimbursements are now credited to the Navy's annual appropriations. Consequently, Congress now appropriates the reimbursements to the Navy as well as the allowances for the Navy personnel assigned to the Office of the Attending Physician.

SCOPE OF SERVICES

Members may voluntarily open medical records with the Attending Physician and are encouraged to participate in a preventive health program through annual physical examinations. Medical information about members and the results from examinations conducted by he Attending Physician are kept confidential but may be sent to Members' private physicians upon written request by a Member. In addition, the Office provides a 24-hour assistance and referral system. The OAP has expanded from its original mission to include the following functions:

a. Provides comprehensive ambulatory care to meet the health care needs of the Members of Congress, and Capitol Officials consistent with professional and facility capabilities.

b. Maintains liaison with military and civilian hospitals to facilitate necessary referral of Members and other eligible beneficiaries requiring hospitalization.

c. Provides limited ambulatory health care services to other eligible beneficiaries to include: Staff, Pages, and the U.S. Capitol Police.

d. Cooperates, and when requested, participates in planning medical support for mass casualties with Military District Washington, Chief of the U.S. Capitol Police, Architect of the Capitol and other officials as appropriate.

e. Supervises the operations of nine satellite first aid rooms located in House and Senate Office Buildings that provide support to the over 20,000 staff personnel who work for Congress.

f. Provides CPR and First Aid instruction to Congressional staff.

g. Medical consultant to the 1,200 man U.S. Capitol Police.

h. Provides medical support for Inaugurations, Joint Sessions of Congress, visiting Heads of State, and a myriad of other special events at the Capitol.

i. Serves as medical consultants for various medical screening programs, blood drives, bone marrow registries, and health fairs for the over 20,000 staff personnel who work for the Congress.

j. Oversees certain aspects of the environment and occupational health requirements of the Capitol and other House and Senate Office Buildings.

k. Provides supervision of the sanitary handling of food and the health of food service workers in the Capitol complex.

l. Provides emergency care, utilizing a highly trained medical response team, for the over one million tourists, medically handicapped visitors, school children, church organizations, and service groups that visit the Capitol each year.

m. Provides allergy shots to staff conditional on their providing the serum. Immunizations are provided to Members of Congress and their staffs for approved Congressional travel. Annual flu shots are provided to Congressional staff for a nominal fee.

n. Specialized services provided to Members include: a Medical Response Team with emergency equipment which is on call when the Office is open; ambulance service; complete laboratory, X-ray, pharmacy and physiotherapy services; electrocardiographic service (each Member is furnished with a wallet-size copy of his/her electrocardiogram).

Anecdotes about incidents in which Attending Physician has been involved recently:

Cared for 5 Catholic Nuns who had gotten frostbite of toes protesting in snow in front of Capitol.

Cared for protesters on hunger strike for homeless when they passed out.

First on scene and stabilized Vietnamese protester who tried to commit "Hari Kari" with sword on steps of Capitol.

First on scene and tried to resuscitate man who dowsed self with gasoline and burned self to death on West Front.

Aided and probably saved life of groundskeeper who had tree limb fall on head near Grotto.

First on scene, helped resuscitate and evacuate a policeman and two visitors who had heart attacks during Inauguration.

Treated and "patched up" Lech Walesa's translator when he had fever and laryngitis so that he could work during Joint Meeting.

Treated several visiting members of foreign Parliaments, including Italian, Japanese, and English during official visits.

Assisted after a young woman delivered a baby in Capitol bathroom.

Assisted in treating illnesses of Congressional witnesses.

Assisted on numerous occasions when large group of handicapped or other groups of people with such disorders as diabetes, epilepsy, multiple sclerosis, sarcoidosis, who have come to the Capitol and have subsequently become acutely ill.

EXTENSION OF EMERGENCY UNEMPLOYMENT BENEFITS

Mr. KENNEDY. Mr. President, because of the continuing stagnation of the economy, the Senate and House will soon be acting on legislation for further extension of emergency unemployment benefits. When we do, we must also correct a serious error in the program's design that is causing unintended harm to thousands of long-term unemployed workers. These are men and women who have taken part-time jobs in order to ease the burden of recession on their families.

The problem arises after a year has passed since they first lost their job. If they have taken part-time work during that year, their unemployment benefits are recalculated based on their part-time earnings, not the higher wages they were receiving before they lost their full-time jobs earlier in the recession.

In February, Senator KERRY and I introduced S. 2221, the Unemployment Benefits Insurance Act of 1992, to correct this problem. Companion legislation was introduced by Congressman MARKEY in the House and cosponsored by all Members of the Massachusetts delegation. I am delighted to learn that this correction has now been included in an overall bill in the Ways and Means Committee introduced yesterday by Chairman ROSTENKOWSKI and Congressman DOWNEY. There still are hurdles to be cleared, but I think it is fair to say that this long overdue help for the part-time unemployed is at least on a fast track in Congress and will soon be signed into law.

The problem is unintended, but it is very harsh in its consequences. It affects relatively few States so far, but Massachusetts is one of them because of the excessive depth and duration of the recession in the State. More than 1,000 workers in Massachusetts have had their unemployment benefits unfairly reduced by more than 50 percent merely because they earned over $1,200 from part-time work during 1991.

In effect, these workers are being penalized because they chose to accept part-time work or found it necessary to do so to ease the burden on their families. Many of these workers did so at a time when no Federal program of extended unemployment compensation was in place. In many cases, the victims are Persian Gulf veterans whose National Guard and Reserve units were called up in the fall of 1990 as the recession was beginning to hit hard. In the spring of 1991, they returned to no jobs.

Now, to add insult to injury, their unemployment benefits have been reduced because of the modest income they earned by continuing to fulfill their National Guard and Reserve obligations. Congress did not intend to penalize unemployed workers who take part-time work. Congress did not intend to penalize Persian Gulf veterans who continue to drill with their units one weekend a month or one weekend a year. No one wants this perverse disincentive to remain in place because it clearly discourages the unemployed from seeking jobs.

The correction that I introduced in February and that is now part of the

Ways and Means Committee bill will remedy the problem by giving workers the option to continue receiving the full Federal benefits they were previously receiving without reduction because of intervening part-time wages they earned. It is time to right the wrong that is being done to these workers. This recession has dragged on far, far longer than it should have. These men and women and their families deserve help now. I urge Congress to expedite the action on this needed provision.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $3,881,287,580,150.16, as of the close of business on Tuesday, March 31, 1992.

As anybody familiar with the U.S. Constitution knows, no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000 just to pay the interest on spending approved by Congress—over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL INSTITUTES OF HEALTH REVITALIZATION AMENDMENTS

The PRESIDING OFFICER. The clerk will report the pending business.

The bill clerk read as follows:

A bill (H.R. 2507) to amend the Public Health Service Act to revise and extend programs of the National Institutes of Health, and for other purposes.

The Senate resumed consideration of the bill.

Mr. KENNEDY. Mr. President, Senator HATCH and I have agreed to accept a series of amendments offered by Senators BRADLEY, DECONCINI, LEAHY, NICKLES, JEFFORDS, and DOLE. They were eligible to be offered in the unanimous consent agreement by the majority leader. And it is our intention, having worked it out with the various Senators, to offer a management amendment that includes those items that I have just listed, and the manager's amendment be considered and agreed to.

I will, before sending the manager's amendment to the desk, mention very briefly what is included in the manager's substitute.

It will include the children's vaccine initiative offered by Senator BRADLEY—an important step forward in preventing common childhood illnesses all over the world through the development of new vaccines, and improved technologies to deliver them.

The worker's family protect initiative offered by Senator JEFFORDS. He will be over here to speak on this issue. He has worked very closely with us. This is to increase the Nation's understanding and awareness of the potential threat of hazardous chemical and substances to the health and welfare of workers and their families.

The cancer registry and breast cancer study initiative offered by Senator LEAHY which will allow States to establish registries to monitor the incidence and mortality of cancer and to study the alarming elevation of breast cancer rates.

I would like to thank Senator WELLSTONE for his recommendation of including the collection of worker and occupational history as part of the information to be provided the cancer registry. This is an important step forward in identifying potential occupational risk factors for cancer and presently, these data are not being collected by cancer registries.

It would also include the prostate cancer initiative offered by Senator DOLE which will strengthen the prevention, early detection, and treatment programs at the NIH.

The amendment offered by Senator DECONCINI to strengthen the safeguards established until title II by increasing the criminal penalties for solicitation or selling of fetal tissue.

The establishment of a fetal tissue registry and bank.

This is basically the concept that had been included in the Hatch amendment that we debated previously.

The amendment offered by Senator NICKLES to study the 20 leading causes of death.

I would like to thank Senator GLENN for his recommendations for the modification of title IX. We have included his recommendations in this substitute.

Mr. President, those are the elements that are in the manager's amendment, and I send the amendment to the desk.

AMENDMENT NO. 1753

(Purpose: To improve the bill)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1753.

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

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

The amendment is as follows:

On page 26, line 20, after the period add the following new sentence: "Of the amounts appropriated under this section for any fiscal year, not less than 25 percent of such amount shall be made available for institutions that meet the requirements of section 499E(d)(2)(B)(25)(II)(aa)."

At the appropriate place in title I, insert the following new sections:

SEC. ___. PROSTATE CANCER RESEARCH.

(a) FINDINGS.—Congress finds that—

(1) one in every 11 men will develop prostate cancer;

(2) it is estimated that 34,000 deaths will occur in 1992 from prostate cancer, the second leading cause of cancer deaths in men;

(3) an estimated 132,000 new cases of prostate cancer will occur in 1992;

(4) current Federal research efforts in prostate cancer totaled $28,000,000 in fiscal year 1992;

(5) additional research concerning prostate cancer is urgently needed; and

(6) there is a need to accelerate the investigation into the cause, treatment and prevention of prostate cancer.

(b) EXPANDED RESEARCH.—Subpart 1 of part C of title IV (42 U.S.C. 285 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 417. EXPANDED PROSTATE CANCER RESEARCH.

"(a) IN GENERAL.—The Secretary shall undertake to expand and intensify prostate cancer research efforts through appropriate activities, including—

"(1) the conduct of basic research concerning the etiology and causes of prostate cancer;

"(2) the conduct of clinical research and related activities into the causes, prevention, detection and treatment of prostate cancer;

"(3) the implementation of prevention and control and early detection programs with respect to prostate cancer in accordance with section 412, particularly as it relates to intensifying research on the role of PSA for the screening and early detection of prostate cancer;

"(4) the implementation of information and education programs with respect to prostate cancer in accordance with section 413;

"(5) the implementation of research and demonstration programs with respect to prostate cancer in accordance with section 414, including the development and operation of prostate cancer research centers to bring together basic and clinical, biomedical and behavioral scientists to conduct basic and clinical, epidemiologic, psychosocial, prevention and treatment research and related activities; and

"(6) the establishment of an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of cancer research efforts.

"(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, in addition to the amounts authorized be appropriated for the National Cancer Institute under section 301 and 408, there are authorized to be appropriated $72,000,000 for fiscal year 1993, and such sums as are necessary for each of the fiscal years 1994 through 1997.".

SEC. ___. PROSTATE CANCER PREVENTION.

(a) FINDINGS.—Congress finds that—

(1) prostate cancer is the second most common cause of death from cancer among men;

(2) early detection can prevent death from prostate cancer;

(3) routine digital examination is one method for detecting potentially malignant prostatic nodules, and should be performed annually on all men over 40 years of age;

(4) advances in the early detection of prostate cancer, such as tests for prostate-specific antigens in the blood and non-invasive imaging techniques, may prove to be cost-effective screening techniques;

(5) education is needed to improve the application of proven cancer screening techniques; and

(6) increased efforts are needed to ensure that cost-effective methods for early prostate cancer detection are made available to men at risk.

(b) MORTALITY PREVENTION.—Part B of title III is amended by inserting after section 317A (42 U.S.C. 247b-1) the following new section:

"SEC. 317B. PROSTATE CANCER MORTALITY PREVENTION.

"(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, may award grants to States and local health departments for the purpose of enabling such States and departments to carrying out programs to—

"(1) screen men for prostate cancer as a preventive health measure;

"(2) provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

"(3) develop and disseminate public information and education programs for the detection and control of prostate cancer;

"(4) improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of prostate cancer;

"(5) establish mechanisms through which the States can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

"(6) evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program monitoring activities.

"(b) GRANT APPLICATIONS.—

"(1) REQUIREMENT.—No grant may be awarded under subsection (a), unless an application for such grant has been submitted to, and approved by, the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary shall prescribe, and shall include—

"(A) a complete description of the program which is to be provided by or through the applicant;

"(B) assurances satisfactory to the Secretary that the program to be provided under the grant will include education programs designed to communicate to men, and local health officials the significance of the early detection of prostate cancer;

"(C) assurances satisfactory to the Secretary that the applicant will report, on a quarterly basis, the number of men screened for prostate cancer and the number of men who were found to have prostate cancer, the number and type of medical referral made with respect to such men, the outcome of such referrals, and other information to measure program effectiveness as required under paragraph (2);

"(D) assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require; and

"(E) such other information as the Secretary may prescribe.

"(2) TECHNICAL ASSISTANCE.—The Secretary may prove training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to this section.

"(c) MAINTENANCE OF EFFORT.—No grant may be awarded under subsection (a) unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made, and will in no event supplant such State, local, and other non-Federal funds.

"(d) METHOD AND AMOUNT OF PAYMENT.—The Secretary shall determine the amount of a grant made under subsection (a). Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

"(e) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary, at the request of a recipient of a grant under subsection (a), may reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which any such grant is so reduced. Such amount shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

"(f) RECORDS.—Each recipient of a grant under subsection (a) shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(g) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a), that are pertinent to such grant.

"(h) INDIAN TRIBES.—For purposes of this section, the term 'units of local government' includes Indian tribes.

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section not more than $20,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) SET-ASIDE FOR TECHNICAL ASSISTANCE.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out activities under this section at the national level.".

On page 41 of the committee amendment, strike out lines 11 through 14 and insert the following:

"(c) CRIMINAL PENALTIES FOR VIOLATIONS.—

"(1) IN GENERAL.—A person who violates subsection (a) or (b) shall be fined in accordance with title 18, United Stats Code, and imprisoned for not more than 10 years.

"(2) PENALTIES APPLICABLE TO PERSONS RECEIVING CONSIDE' TION.—A person who receives valuable consideration in connection with an offense under subsection (a) or (b) shall, notwithstanding section 3571 (c) and (d) of title 18, United States Code, be fined not less than twice the amount of the valuable consideration received.

On page 41 of the committee amendment, after line 25, insert the following new section:

SEC. 205. ESTABLISHMENT OF REGISTRY AND BANK AND STUDY.

Part G of title IV, as amended by sections 203 and 204, is further amended by inserting after section 498B the following new section:

"SEC. 498C. ESTABLISHMENT OF REGISTRY AND BANK.

"(a) IN GENERAL.—The Secretary shall establish a human fetal tissue registry and bank for the purposes of collecting and storing human fetal tissue obtained subsequent to a spontaneous or induced abortion, ectopic pregnancies or subsequent to a stillbirth.

"(b) STUDY CONCERNING THE PRESERVATION OF FETAL CELLS AND TISSUE.—The Secretary shall conduct a study to assess the various methods available for the optimal preservation of viable human fetal cells and tissue, including an assessment of—

"(1) the transportation and storage conditions involved;

"(2) the intervals between the collection of such cells and tissues and the cryopreservation or utilization of such; and

"(3) the methods and conditions for maintaining the optimal viability and functional integrity of both frozen and unfrozen cells and tissues.

"(c) CONSTRUCTION.—Nothing in this section shall be construed as authorizing or requiring a delay in the provision or continuation of funding for research concerning human fetal tissue transplantation.".

On page 42 of the committee amendment, line 1, strike out "205" and insert in lieu thereof "206.

On page 44 of the committee amendment, line 3, strike out "206" and insert in lieu thereof "207.

Strike out title IX, and insert in lieu thereof the following new title:

TITLE IX—REVITALIZATION OF INTRAMURAL RESEARCH PROGRAM

Subtitle A—Authorities of the Director

SEC. 901. MANAGEMENT OF THE INTRAMURAL PROGRAM.

Section 402(b) (42 U.S.C. 282(b)) is amended—

(1) in paragraph (10), by striking out "and" at the end thereof;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10), the following new paragraph:

"(11) exercise supervision, through the directors of the national research institutes,

over the intramural research program of the National Institutes of Health; and".

Subtitle B—Personnel

SEC. 911. PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER.

Part A of title IV (42 U.S.C. 281 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 404. PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER.

"(a) STUDY OF PERSONNEL SYSTEM.—Not later than 1 year after the date of enactment of this section, the Secretary, acting through the Director of NIH, shall conduct a study to review the retention, recruitment, vacancy and turnover rates of support staff, including firefighters, law enforcement, procurement officers, technicians, nurses and clerical employees, to ensure that the National Institutes of Health is adequately supporting the conduct of efficient, effective and high quality research for the American public. The Director of NIH shall work in conjunction with appropriate employee organizations and representatives in developing such a study.

"(b) SUBMISSION TO CONGRESS.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing the study conducted under subsection (a) together with the recommendations of the Secretary concerning the enactment of legislation to implement the results of such study.".

Subtitle C—Warren Grant Magnuson Clinical Center

SEC. 921. RENOVATION AND REPLACEMENT PROGRAM.

Title IV (42 U.S.C. 281 et seq.) (as amended by section 106) is further amended by adding at the end thereof the following new part:

"PART J—RESTORATION AND RENOVATION OF FACILITIES AND INFRASTRUCTURE

"Subpart 1—Warren Grant Magnuson Clinical Center

"SEC. 499N. WARREN GRANT MAGNUSON CLINICAL CENTER RENOVATION AND REPLACEMENT PROGRAM.

"(a) ESTABLISHMENT.—To address the problems existing at the Warren Grant Magnuson Clinical Center (hereafter referred to as the 'Clinical Center'), the Director of NIH may establish and implement a program for the renovation of the existing Clinical Center facility or the construction of a replacement facility. The Director may conduct feasibility studies to determine the appropriate action to be taken concerning the Clinical Center.

"(b) TRANSFER OF LAND.—

"(1) IN GENERAL.—The Secretary, acting through the Director of NIH, is authorized to accept the transfer to the National Institutes of Health of not less than 25 acres of land from other Federal agencies. Such land shall be suitable for the construction of a new research hospital and clinical center. Such land may include land obtained from the Secretary of the Navy, located on the reservation of the National Naval Medical Center, in Bethesda, Maryland.

"(2) USE AGREEMENT AND MEMORANDUM OF UNDERSTANDING.—The Secretary, acting through the Director of NIH, may enter into a Use Agreement and a Memorandum of Understanding with the Administrators, Director, or Secretaries of the appropriate executive branch entity, to accomplish the transfer of property pursuant to paragraph 1.

"(c) REQUIREMENTS.—

"(1) FACILITIES.—Any facility renovated or constructed under this section shall be equipped with a state-of-the-art capacity for beds and necessary laboratories and be comparable to the current Clinical Center complex, with necessary amenities for employees, volunteers, research subjects and visitors, including cafeteria and vehicle parking facilities.

"(2) TRANSFER OF PERSONNEL.—If a new facility is to be constructed under this section, the Secretary may expend amounts necessary to transfer the personnel and administration of the current Clinical Center to the new facility upon its completion.

"(3) COMPLETION.—Notwithstanding any other provisions of law, the renovation or construction performed under this section shall be completed as soon as feasible.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section. Such funds shall be available beginning October 1, 1992, and shall remain available until expended.".

Subtitle D—Acquisition of Land and Facilities

SEC. 931. ACQUISITION OF LAND AND FACILITIES.

Part I of title IV, as added by section 921, is amended by adding at the end thereof the following new subpart:

"Subpart 2—Acquisition of Land and Facilities

"SEC. 499O. PHYSICAL INFRASTRUCTURE FOR RESEARCH.

"(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Director of NIH, may establish and implement a comprehensive program that is designed to provide for the replacement or refurbishment of less than adequate buildings, utility equipment and distribution systems (including the resources that provide electrical and other utilities, chilled water, air handling, and other services that the Secretary, acting through the Director, deems necessary), roads, walkways, parking areas, and grounds that underpin the laboratory and clinical facilities of the National Institutes of Health. Such program may provide for the undertaking of new projects that are consistent with the objectives of this section, such as encircling the National Institute of Health Federal enclave with an adequate chilled water conduit.

"(b) REQUIREMENTS.—

"(1) DESIGN OF PROGRAM.—In establishing the program under subsection (a), the Secretary shall ensure that such program is designed to modernize the existing research and clinical laboratory infrastructure of the National Institutes of Health in the shortest possible time consistent with good stewardship of Federal funds.

"(2) FUTURE EXPANSION.—In designing the program under subsection (a), the Secretary may make reasonable allowance for future expansion and usual employee amenities, such as cafeteria services and vehicle parking.

"(3) NONDISRUPTION OF OPERATIONS.—In carrying out the program established under subsection (a), the Director of NIH shall, to the extent feasible, plan renovations and construction in such a manner that significant elements of the research program at the Institutes are not significantly disrupted.

"SEC. 499P. ACQUISITION OF LAND.

"(a) IN GENERAL.—The Director of NIH may purchase not to exceed a total of 300 acres of land for the establishment of a satellite campus in Maryland for the purpose of enhancing the intramural research capacity of the National Institutes of Health.

"(b) STUDY.—Prior to the purchase of land under subsection (a), the Director of NIH shall conduct a study concerning the expansion needs of the National Institutes of Health and the purpose for which the land is to be purchased. A report concerning such study shall be submitted for approval to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Labor and Human Resources of the Senate, and to the other appropriate committees of Congress.

"SEC. 499Q. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out this subpart. Amounts appropriated under this subsection shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which such amounts are appropriated.".

Subtitle E—Procurement

SEC. 941. STUDY.

The Director of the National Institutes of Health and the Administrator of the General Services Administration shall jointly conduct a study to develop a streamlined procurement system for the National Institutes of Health that complies with the requirements of Federal Law.

Subtitle F—General Provisions

SEC. 951. FINDINGS.

Congress finds that participation of women in the National Institute of Health research enterprise and its undertakings is essential to the continued growth of the intramural program and, to this end, efforts should be directed, to the extent practicable, to provide accommodations such as child care so that more women, particularly at the child-rearing stage, can participate as scientists in the intramural research program and as subjects in research programs conducted at the research hospital and clinical center of the National Institutes of Health.

SEC. 952. DAY CARE.

Part G of title IV is amended by inserting after section 496 (42 U.S.C. 289e) the following new section:

"SEC. 496A. DAY CARE.

"(a) ESTABLISHMENT OF DAY CARE PROGRAM.—The Director of NIH may establish a program to provide day care service for the employees of the National Institutes of Health similar to those services provided by other Federal agencies.

"(b) SLIDING SCALE.—Any day care provider at the National Institutes of Health may establish a sliding scale that takes into consideration the income and needs of the employee.

"(c) OTHER SERVICES.—The Director of NIH may provide for the availability of day care service on a 24-hour-a-day basis if the Director considers such appropriate to meet the needs of employees. In order to accommodate these needs, the Director is further authorized to enter into a rental or lease purchase agreement as needed.".

At the appropriate place in title X, insert the following new sections:

SEC. ___. CHILDREN'S VACCINE INITIATIVE.

Part G of title IV is amended by inserting after section 494 (42 U.S.C. 289c) the following new section:

"SEC. 494A. CHILDREN'S VACCINE INITIATIVE.

"(a) AUTHORITY.—The Secretary, in collaboration with the National Vaccine Program under title XXI, shall conduct vaccine research and development to contribute to the global Children's Vaccine Initiative envisioned by world leaders at the World Summit on Children.

"(b) DEVELOPMENT OF NEW VACCINES.—In carrying out subsection (a), the Secretary, through the National Institute for Allergy and Infectious Diseases, the National Institute for Child Health and Human Development, the National Institute for Aging, and other public and private programs, shall carry out activities to develop affordable new and improved vaccines to be used in the United States and in the developing world that will increase the efficacy and efficiency of the prevention of infectious diseases. The goal of the activities conducted under this section is to develop and make available vaccines that require fewer contacts to deliver, that can be given early in life, that provide long lasting protection, that obviate refrigeration, needles and syringes, and that protect against a larger number of diseases.

"(c) REPORT.—The Secretary shall include in the report required under section 2104, information with respect to activities and the progress made in implementing the provisions and achieving the goals of this section.

"(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated for activities of the type described in this section, there are authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $30,000,000 for fiscal year 1996.".

SEC. _____. WORKERS' FAMILY PROTECTION.

(a) SHORT TITLE.—This section may be cited as the "Workers' Family Protection Act".

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons;

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) PURPOSE.—It is the purpose of this section to—

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) EVALUATION OF EMPLOYEE TRANSPORTED CONTAMINANT RELEASES.

(1) STUDY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies (such as the National Institutes of Health) as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.

(B) MATTERS TO BE EVALUATED.—In conducting the study and evaluation under subparagraph (A), the Director shall—

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by—

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including—

(I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

(II) the health effects, if any, of the resulting exposure on workers and their families;

(III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers' homes and personal clothing;

(IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

(iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

(v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

(vi) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) DEVELOPMENT OF INVESTIGATIVE STRATEGY.—

(A) TASK FORCE.—Not later than 12 months after the date of enactment of this Act, the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall—

(i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the number of individuals appointed to represent industry and workers shall be equal in number;

(ii) review the report submitted under paragraph (1)(B)(v);

(iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

(iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) INVESTIGATIVE STRATEGY.—

(i) CONTENT.—The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data.

(ii) PEER REVIEW.—The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars for the purpose of obtaining comments concerning the proposed strategy.

(iii) FINAL STRATEGY.—After the peer review and public comment is conducted under clause (ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) CONSTRUCTION.—Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) IMPLEMENTATION OF INVESTIGATIVE STRATEGY.—Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than 4 years after that date of enactment of this Act, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) and on other information available to the Secretary, shall—

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed to protect workers and their families from employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the results of such determination.

(2) ADDITIONAL REGULATIONS OR STANDARDS.—If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section.

SEC. . ANNUAL REPORT CONCERNING THE LEADING CAUSES OF DEATH.

(a) REPORT.—The Secretary of Health and Human Services shall, not later than August

31, 1992, and not later than March 31 of each year thereafter, prepare a report that lists—

(1) the 20 illnesses that are the leading causes of death in the United States and the number of deaths from each such cause, the age-specific and age-adjusted death rates for each such cause, the death rate per 100,000 population for each such cause, the percentage of change in cause specific death rates for each age group, and the percentage of total deaths for each such cause;

(2) the amount of money that the Department of Health and Human Services spent on research, prevention, and education with respect to each of the 20 illnesses described in paragraph (1) for the most recent year for which the actual expenditures are known;

(3) the amount of money the Secretary estimates that the Department of Health and Human Services will spend on research, prevention, and education with respect to each of the 20 illnesses described in paragraph (1) for the year for which the report is prepared; and

(4) with respect to the years specified in paragraphs (2) and (3), the percentage of the total of the annual expenditures for research, prevention, and education on the 20 illnesses described in paragraph (1) that are attributable to each illness.

(b) SUBMISSION TO CONGRESS.—The Secretary of Health and Human Services shall submit the report required under subsection (a), together with relevant budget information, to the chairman and ranking minority member of the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

At the appropriate place, insert the following new title:

TITLE —NATIONAL PROGRAM OF CANCER REGISTRIES

SEC. 01. SHORT TITLE.

This title may be cited as the "Cancer Registries Amendment Act".

SEC. 02. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry;

(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information; and

(6) nine States and localities participate in the Surveillance, Epidemiology, and End Results Program administered by the Director of the National Cancer Institute, a highly successful national cancer registry program that should be maintained and enhanced in accordance with its original intent.

(b) PURPOSE.—It is the purpose of this Act to establish a national program of cancer registries.

SEC. 03. ESTABLISHMENT OF A NATIONAL PROGRAM OF CANCER REGISTRIES.

Title III (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

"SEC. 399B. NATIONAL PROGRAM OF CANCER REGISTRIES.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Institute involved, may make grants to States, or may make grants or enter into contracts with academic or non-profit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer with the exception of basal cell and squamous cell carcinoma of the skin, data concerning—

"(1) demographic information about each case of cancer;

"(2) information on industry and occupation for each case of cancer, to the extent such information is available from the same record;

"(3) administrative information, including date of diagnosis and source of information;

"(4) pathological data characterizing the cancer, including the cancer site, stage of disease (Staging Guide), incidence, and type of treatment; and

"(5) other elements determined appropriate by the Secretary.

"(b) MATCHING FUNDS.—

"(1) IN GENERAL.—The Secretary may make a grant under subsection (a) only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION; MAINTENANCE OF EFFORT.—

"(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(B) With respect to a State in which the purpose described in subsection (a) is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the average amount of such contributions made by the State toward the collection of data on cancer for the 2-year period preceding the first fiscal year for which a grant under subsection (a) is made with respect to the State. State contributions towards cancer control prevention services made during fiscal year 1992 shall be included in satisfying the State matching requirement for the initial fiscal year during which this section is in effect.

"(c) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—No grant shall be made by the Secretary under subsection (a) unless an application therefore has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 491 and 492.

"(2) ASSURANCES.—Each applicant, prior to receiving Federal funds under subsection (a), shall provide assurances satisfactory to the Secretary that the applicant will—

"(A) provide for the establishment of a statewide population-based cancer registry by the State health department, or by one or more academic health centers, nonprofit cancer research and prevention organizations, or medical societies acting in collaboration with the State health department;

"(B) comply with appropriate standards of completeness, timeliness, and quality or population-based cancer registry data;

"(C) provide for the annual publication of reports of cancer data under subsection (a); and

"(D) provide for the authorization under State law of the statewide cancer registry, including—

"(i) a means to assure complete reporting of cancer cases (as described in subsection (a)) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients;

"(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a)) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

"(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing screening, diagnostic or therapeutic services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

"(iv) the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

"(v) the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other States cancer registries and local and State health officers;

"(vi) the promulgation of regulations under which confidential case data may be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

"(vii) the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

"(viii) protection for individuals complying with the law, specifically that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

"(d) RELATIONSHIP TO CERTAIN PROGRAMS.—

"(1) IN GENERAL.—This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

"(2) SUPPLANTING OF ACTIVITIES.—In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2) (C) and (D) and are appropriately coordinated with the existing SEER program.

"(3) TRANSFER OF RESPONSIBILITY.—The Secretary may not transfer administration responsibility for such SEER program from such Director.

"(4) COORDINATION.—To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under part M with existing Federally supported cancer registry programs.

"(e) REQUIREMENT REGARDING CERTAIN STUDY ON BREAST CANCER.—In the case of a grant under subsection (a) to any State specified in section 399D(a)(2), the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.

"SEC. 399C. PLANNING GRANTS REGARDING REGISTRIES.

"(a) IN GENERAL.—

"(1) STATES.—The Secretary, acting through the Director of the Institute involved, may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).

"(2) OTHER ENTITIES.—For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

"(b) APPLICATION.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 399D. STUDY IN CERTAIN STATES TO DETERMINE THE FACTORS CONTRIBUTING TO THE ELEVATED BREAST CANCER MORTALITY RATES.

"(a) FINDING.—

"(1) IN GENERAL.—Congress finds that the Director of the National Cancer Institute has determined that the rates of mortality for breast cancer in the States specified in paragraph (2) are elevated compared to rates in other States.

"(2) RELEVANT STATES.—The States referred to in paragraph (1) are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

"(b) STUDY TO DETERMINE THE FACTORS CONTRIBUTING TO ELEVATED MORTALITY RATES.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary, acting through the Director of the Institute involved, shall conduct a study for the purpose of determining factors contributing to the determination described in subsection (a) with respect to the States.

"(2) COOPERATION OF STATE.—The Secretary may conduct a study required in paragraph (1) in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 399B(a).

"(3) PLANNING, COMMENCEMENT, AND DURATION.—The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in paragraph (1). The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

"(4) REPORT.—Not later than September 30, 1999, the Secretary shall complete the study required in paragraph (1) and submit to the appropriate committees of Congress the findings and recommendations made as a result of the study.

"(5) DEFINITION.—As used in this subsection, the term 'relevant State' means a State specified in subsection (a)(2).

"SEC. 399E. TECHNICAL ASSISTANCE IN OPERATIONS OF STATEWIDE CANCER REGISTRIES.

"The Secretary, acting through the Director of the Institute involved, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

"SEC. 399F. AUTHORIZATION OF APPROPRIATIONS.

"(a) REGISTRIES.—For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for each of fiscal years 1993 through 1999. Out of any amounts appropriated for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 399C, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection 399E.

"(b) BREAST CANCER STUDY.—From amounts appropriated for the National Cancer Institute under sections 301 and 408, the Secretary shall expend not less than $1,000,000 for each fiscal year to carry out section 399D.".

CHILDREN'S VACCINE

Mr. BRADLEY. Mr. President, I rise today to propose an amendment to authorize Federal support for the continuing development of a children's vaccine to help immunize children in America and overseas against a wide range of diseases. The legislation authorizes $50 million for 1993, rising to $125 million in 1996.

Mr. President, there was once a time in America when it was left almost to chance whether a child would grow to reach adulthood. Many large families took it for granted that at least one of their children would be lost to polio, diphtheria, measles, or another contagious disease before adolescence. For most parents who sent their children back to school this fall with their inoculation records and booster shots, those days are history, thanks to the greatest lifesaving invention in all of medicine—vaccines.

But the diseases that our children complain about getting shots for because they have never heard of them are still a matter of daily life—and death—for millions of children around the world. Each year, 3 million kids die from the major diseases that can be prevented by vaccines. Only about 70 percent of the infants in the developing world were immunized in 1990. That's a tremendous improvement over the 5 percent that were immunized in 1974, and most of the improvement can be attributed to the United Nations immunization program, supported in part by the Child Survival Fund. But it's still not enough to eradicate killer diseases in the way that we have eliminated polio in the U.S. and smallpox worldwide.

In most countries in the past decade, UNICEF, the World Health Organization, the U.S. Agency for International Development, and other groups have built an adequate system for delivering vaccines to children. In very poor areas, children never see a doctor at all, or they receive only partial immunization. About 70 percent of the children in Jersey City, NJ, are not properly immunized. And in New Jersey—in 1990—two children died from measles. We must continue to work to make primary health care, including immunizations, a basic right of all children. But universal immunization will also require a bigger goal—better vaccines. A few forward-looking scientists and public health officials have a vision of a children's vaccine. Administered once in infancy, it could prevent about a dozen diseases for a lifetime.

Mr. President, immunizing every child in the world today is made more difficult by the characteristics of the vaccines we have available:

Children need too many different vaccines keyed to different diseases. American schoolchildren must get three separate vaccine mixtures, including two that prevent three diseases

each, and regular booster shots. In countries where illnesses like yellow fever are prevalent, even more distinct vaccines are required. The children's vaccine would immunize a child against numerous diseases at once, including regional plagues like Japanese encephalitis and many for which good vaccines are not yet available.

To remain effective, current vaccines require too many regular booster shots. Recent severe outbreaks of measles in high schools and on college campuses in New Jersey recently have been attributed to neglect of booster shots. The children's vaccine would need to be administered only once in a lifetime, in infancy.

Most vaccines need constant refrigeration in order to remain potent. This makes it more difficult to bring the vaccines to isolated areas or store them in small, rural medical facilities. The children's vaccine would be stored and transported at room temperature.

Most vaccines are administered by injection, which not only requires more equipment but makes children reluctant to return for boosters. The children's vaccine would be administered orally, like the Sabin polio vaccine.

The children's vaccine is an ideal, like JFK's vision of putting a man on the Moon. It may take anywhere from 10 to 30 years of research before that single once-in-a-lifetime vaccine reaches the market. Each step along the way, though, will lead to more and better vaccines and help children live longer, healthier lives.

But the revolution in biotechnology makes the children's vaccine more than just a dream. Scientific research into vaccines peaked in the 1930's and declined with the introduction of antibiotics. New insights into the structure of the immune system and our ability to tinker with the very DNA of a virus make it likely that the 1990's will bring renewed progress in the development of human vaccines.

The only obstacle to this progress is an economic one. Vaccines are a public good; they are not particularly profitable for pharmaceutical companies, especially if they need be administered only once in a lifetime. If we are to realize the major advances that recent science makes possible, governments will have to play a stronger role. Currently the United States provides $140 million for worldwide vaccine research. Developing the children's vaccine is an Apollo project for the world's children, and this legislation will provide resources adequate to this lifesaving task.

The development of the children's vaccine has been endorsed by the World Health Organization's Scientific Group of Experts for the Programme on Vaccine Development. In addition, the National Vaccine Program convened a special meeting of experts at the National Institutes of Health last year about the technical feasibility of such an initiative. The results of that meeting also were overwhelmingly positive. Given the outpouring of support for the development of the children's vaccine, last year Congress provided $6 million to HHS and AID for early development work. It is my hope and expectation that more funds will be provided this year for this important initiative.

I urge support for this amendment.

WORKERS' FAMILY PROTECTION ACT

Mr. JEFFORDS. Mr. President, I would like to thank the managers of H.R. 2507 for accepting my amendment based upon the Workers' Family Protection Act which passed the Senate earlier this year. My statement on this amendment is very brief as I have spoken in more detail about this legislation previously.

It is my hope, Mr. President, that if the Workers' Family Protection Act is enacted, we can begin to protect workers' families from toxic chemicals inadvertently brought home from the workplace. This problem of take home toxins has occurred across the country. Health effects in family members have ranged from headaches to death. Small children seem to suffer the most. This is unacceptable. This amendment will help us identify the causes of home contamination, help us determine the threat such contamination poses, and help us prevent future cases.

I believe H.R. 2507 is an appropriate vehicle for this amendment as both my amendment and H.R. 2507 are health related. NIOSH is primarily responsible for implementing the Workers' Family Protection Act. The expertise in the National Institutes of Health, however, could be very important in determining the risks associated with home contamination. It is my hope that the Director of NIOSH will avail himself of this expertise. Both the National Institutes of Health and NIOSH are part of Health and Human Services. Thus, coordination between these two entities will hopefully not be too difficult.

Though the amendment strongly encourages the Director of NIOSH to consult with NIH, I have not specified which division of NIH the Director should utilize. This was not an oversight. Since I do not know the number or types of different health effects which could occur as a result of take home toxins, I believed it best to leave that judgment up to the Director. In this way, the Director would be free to seek whatever health related expertise available at NIH that the Director may need.

This amendment should also not pose a financial burden on NIH. I envision NIH's role as one of providing occasional technical assistance to NIOSH or others involved in implementing the Workers' Family Protection Act. For example, ATSDR, in evaluating community health effects, may need to consult with or utilize in some other fashion NIH experts on various illnesses or effects. I believe it is important the ATSDR have access to NIH expertise when needed. To help identify where such expertise may be available, the Director may wish to appoint a representative of NIH to the task force created by this amendment. Again, I thank my colleagues for accepting this amendment and look forward to working with you in conference.

Mr. HARKIN. Mr. President, I rise today to express my strong support for H.R. 2507, the National Institutes of Health Reauthorization Act of 1992. I was pleased to be an original sponsor of this important legislation when it was introduced last fall and to have worked with Senator KENNEDY and others to bring it to the form which is before us today. It contains a number of important changes and advancements to our world-leading biomedical research program and will significantly enhance the work of the National Institutes of Health [NIH]. It will move us forward in searching out causes, treatments and preventive strategies to health problems affecting so many Americans.

Mr. President, I am particularly pleased that H.R. 2507 contains several initiatives I have worked on for some time. First, the bill before us today includes the provisions of S. 1887, the National Institute for Nursing Research Act of 1991, legislation I introduced in October of last year along with my colleagues Senators KENNEDY, INOUYE, BURDICK, and DASCHLE. This proposal would appropriately elevate the status of the successful National Center for Nursing Research [NCNR] at the National Institutes of Health to that of an institute—the National Institute for Nursing Research.

Mr. President, it is not only appropriate that Congress take the important step of elevating the status of the Nursing Center to that of an Institute, it is overdue. America's nearly 2 million nurses have for too long been denied the recognition and status they deserve within our health care system. Throughout our Nation's history, nurses have been at the core of our health care system, providing high quality cost-effective care. Yet, the role and accomplishments of nurses within the health care system have too often not been given appropriate equal recognition. And so it has been in the area of research. While NCNR has proven itself as a major force within NIH, and despite a structure and list of activities which put it on par with other institutes, it has not been recognized as such by being given the designation as an institute.

The National Center for Nursing Research has been tremendously successful in its short history. Through its division of extramural programs and division of intramural research, NCNR has produced critical research findings that are already resulting in more af-

fordable, higher quality health care for many Americans. For example, through a grant from NCNR, nurse researchers at the University of Iowa are developing cost effective ways of reducing the incidence of falls among frail older Americans. The results of this research will greatly improve the quality of life for many older Americans, while lowering long-term care costs for themselves and their families by reducing the incidence of broken hips, a leading cause of nursing home admissions.

The elevation of NCNR to institute status will help further build on its impressive beginning at NIH.

Mr. President, I also am pleased that S. 966, the Contraceptive and Infertility Research Center Act of 1991, a proposal that I introduced last year along with Senators PACKWOOD, HATFIELD, MIKULSKI, SIMON, CRANSTON, and LIEBERMAN is incorporated in the measure before us. This bipartisan initiative would provide specific authorization for the establishment of three research centers focused on developing improved methods of contraception and two research centers focused on improving our ability to diagnose and treat infertility. As a method of addressing the shortage of qualified researchers in these areas, a loan repayment program for graduate students and health professionals who agree to conduct research on contraception and infertility is also authorized.

There is a tremendous need for these changes. The United States is without question the world leader in biomedical research. Yet, when it comes to research and development in the areas of infertility and contraception, we have lagged behind a number of industrialized nations in the world. This is true despite the fact that infertility and contraception are central concerns to millions of Americans of child-bearing age.

Nearly 2½ million couples desiring to have children struggle with the heartbreak and frustration of infertility. And each year about 3 million American women become pregnant who do not wish to do so. Their anguish is great. All of these individuals can benefit from intensified research on these basic family planning issues. We can all agree that abortion is no one's first choice for avoiding unintended births. Yet, of the 3 million women who become pregnant unintentionally each year, about half will terminate their pregnancies. And, nearly half of the abortions that occur each year are among women who have become pregnant unintentionally because the contraceptive method they were using failed.

The fact is that there are only a limited number of safe and effective methods of preventing pregnancy. More research is needed into improved contraceptive methods so that the number of unintended pregnancies, and thus abortions, can be reduced. That is a result we can all embrace—regardless of our political or religious beliefs.

And just as those who are not prepared to bear children should have access to safe and effective contraceptive methods, those who want to become parents should have access to safe and effective methods to help them conceive and bear children. The causes of infertility are not always easy to diagnose, nor are they uniformly treatable. Treatments are often expensive, costing Americans approximately $1 billion in 1987. Yet even with such a large expenditure of funds, today only about 60 percent of infertility cases are treated successfully. Clearly, more research is needed into the causes of and treatment for infertility in both men and women.

Mr. President, H.R. 2507 also includes important portions of the Women's Health Equity Act. Enactment and effective implementation of these provisions are essential if we are to assure fairness in biomedical research. Improvements are needed in a number of areas, including the number of women and minorities included in NIH sponsored clinical trials, the number of research projects and clinical programs focused on women's health issues, and the number of women in higher level positions at the NIH. These provisions would go a long way toward righting an historical wrong and improving our efforts with regards to women's health research. I want to especially commend my colleague on the Labor Committee, Senator MIKULSKI, for her excellent leadership in this critical area.

H.R. 2507 also authorizes a major increase in our efforts to combat breast cancer, a terrible disease that strikes one in nine American women. Last year we were able to significantly increase support for breast cancer research at NIH through the appropriations process. The $133 million appropriated for fiscal year 1992 will provide a long overdue boost to breast cancer research. But clearly more must be done. H.R. 2507 recognizes this and authorizes $300 million for fiscal year 1993. Importantly, it also authorizes $75 million for research on ovarian, cervical, uterine, and other cancers of women's reproductive system. We simply have to make a greater commitment to these areas.

Mr. President, this legislation also takes the important step of removing the ban on federally funded fetal tissue research. This ill-conceived ban is stopping research that holds great promise for millions of Americans who suffer from conditions such as Parkinson's disease and diabetes. It must be lifted so that legitimate and sorely needed research can be expanded and so that we can assure that such research receives appropriate peer review. H.R. 2507 achieves this important goal and provides comprehensive and appropriate safeguards against abuse. I strongly support this addition to the bill and hope that it will be maintained by the Senate.

There are too many other important components of this legislation for me to touch on them all, but I do want to also mention the important addition it makes toward combating another overwhelming problem confronting our Nation—traumatic brain injury [TBI]. TBI is the leading disabler and killer of children and young adults. Every year 2 million Americans sustain a traumatic brain injury. The legislation before takes the important step of authorizing funds to ensure the identification and assessment of victims, allow accurate assessment of insurance needs and provide a basis for a more rational allocation of resources by establishing TBI as a separate reporting category in Federal data collection systems.

Mr. President, besides my position on the Labor and Human Resources Committee which reported out this legislation, I also serve as chairman of the Appropriations Subcommittee that funds the National Institutes of Health and other health, education, and social services programs. As chairman, I have made expanded support of biomedical research a priority. In 3 years, we have been able to increase support for work at NIH by 26 percent, from $7.1 billion in fiscal year 1989 to $9 billion in fiscal year 1992. I wish we could have been able to provide even more, because I believe biomedical research is such an important national investment and is such a critical component of our health care system. However, we have been constrained by an ill-conceived 1990 budget agreement that paralyzed our ability to effectively deal with the health care, education, and job training needs of the American people. An agreement that denies this body the ability to make decisions about national priorities. An agreement, if left unchanged, that will force significant reductions in many important programs within our subcommittee's jurisdiction. The President's fiscal year 1993 budget reduces outlays for programs within our subcommittee by about 4 percent from their fiscal year 1992 levels. At these levels, we simply will not be able to make the investments we need in our human infrastructure, including biomedical research.

We need to change our spending priorities to recognize the changing nature of the world. The cold war is over. We won. That provides us with the opportunity to address long neglected needs at home. Last year, I attempted a first step toward seizing this opportunity, by offering an amendment to the fiscal year 1992 labor, health and human services, education appropriations bill to shift about $3 billion from unnecessary Department of Defense

procurement funds to a series of important health and education programs. My transfer amendment would have increased funding for NIH research by $570 million. While this initial effort did not prevail, I hope it has set the stage for a significant shift in spending priorities this year.

Mr. President, I hope that we move quickly to approve this important legislation and that we can overcome election year politics and have it signed into law without delay. The American people want action in this area and this legislation provides them significant advancements that are long overdue.

SAFEGUARDS ON FETAL TISSUE TRANSPLANTATION RESEARCH

Mr. GORTON. Mr. President I wish to express my support for the much needed oversight on fetal tissue research provided in H.R. 2701. This bill promotes a sensible and safe approach to helping the 500,000 Parkinson's patients and the approximately 645,000 diabetes patients who await a cure for their conditions. Fetal tissue transplantation research holds great promise for curing diseases and disabilities such as Parkinson's, Alzheimer's, diabetes, Huntington's, leukemia, epilepsy, spinal cord injury, and many other chronic and life threatening conditions. This research also holds great promise for treating unborn children. Each year 195,000 medically necessary abortions are preformed because of genetic defects found through prenatal testing. Successful tissue transplantation procedures may prevent many of these from occurring.

However, we must be careful, Mr. President, that proper safeguards are in place to prevent abuse of this research. In our haste to save lives, we do not want to ignore ethical guidelines. And, strict penalties should be imposed on those who do exploit this research and the people it is designed to help. Mr. President, I believe that this bill does just that. Currently, there are few Federal guidelines regarding privately funded fetal tissue transplantation research. This legislation would fill that void with explicit ethical guidelines and stiff fines and/or imprisonment for those who ignore those strictures.

Title II includes the following provisions:

First, outlaws the purchase, sale or solicitation of fetal tissue;

Second, researchers or physicians associated with the research may not contribute to any costs associated with the abortion;

Third, consent to the abortion must precede the consent to donate the fetal tissue;

Fourth, a woman may not be informed about the identity of the recipient of the fetal tissue transplant;

Fifth, a woman may not designate to whom the fetal tissue will be donated;

Sixth, prohibits the physicians or researchers from altering the timing, method, or procedures used to terminate the pregnancy in order to obtain a better fetal tissue sample or for other research purposes;

Seventh, prohibits procedural changes which may cause greater than minimal risk to the fetus or the pregnant woman;

Eighth, the physician must make known any interest that he may have in the research to be conducted with the donated medical tissue;

Ninth, the recipient of the tissue must be informed by researchers that the tissue is human fetal tissue and the tissue may have been donated as a result of an induced abortion;

Tenth, research must be conducted in accordance with applicable State and local laws;

Eleventh, the researchers and the physicians must provide signed statements verifying the above points upon request to the Secretary of Health and Human Services through the Director of the National Institutes of Health;

Twelfth, provides for fines in accordance with title 18 of the United States Code or a maximum of 5 years imprisonment, or both for violations relating to this act;

Thirteenth, requires the General Accounting Office to conduct an audit, within 2 years of enactment, to determine if the safeguards in this act are being complied with and to make recommendations if further safeguards are needed to prevent abuses.

Fourteenth, expressly prohibits the Secretary of HHS or the Director of NIH from funding any research project that has not been reviewed and approved as the result of an extensive peer review process, including an Institutional Review Board approval, and prohibits them from funding any research that violates the safeguards included in this act.

Mr. President, you will notice that this list is quite extensive. I believe that these safeguards will be sufficient to prevent abuses by publicly or privately funded research projects and will give Federal support to necessary research that may help millions of suffering Americans.

LEAHY AMENDMENT

Mr. HARKIN. Mr. President, I rise to comment on the Leahy amendment dealing with the important issue of national cancer registration in the war against cancer. Cancer is a rising epidemic in the United States and we must combat this epidemic with every possible resource. A key component in our strategy to combat cancer is to create a national capability to define the types of cancer, the frequency of these cancers, and the regional distribution of these cancers. For this reason we should all support Senator LEAHY'S amendment for a National Cancer Registration Program.

Mr. President, I share my colleague's special concern over the devastating effects of breast cancer which will take the lives of over 46,000 American women this year, despite the fact that many of these deaths could be prevented through early detection. For this reason I have introduced the Breast Cancer Screening Act of 1991—S. 508— that would assure that all women aged 50 and older who lack insurance coverage for regular mammography screening would be provided this important early detection benefit. We have also increased the appropriation for breast and cervical cancer screening from $29 million in fiscal 1991 to $50 million in fiscal year 1992, while the appropriation for the National Cancer Institute was increased by $300 million in fiscal year 1992. These are appropriate and well justified increases in funding for biomedical research to combat our national cancer epidemic.

Mr. President, while I support Senator LEAHY'S amendment for national cancer registration through individual states, it is important that this amendment in no way diminish or compromise the National Cancer Institute's Surveillance, Epidemiology, and End Results Program [SEER] which has been continuously funded since 1973 and which is recognized as the finest cancer registration program in the world. Indeed, the SEER Program has developed the cancer registration methods which will be used in the National Cancer Registration Program proposed by Senator LEAHY. The SEER Program, which is located in 9 regionally representative States and cities, is widely regarded as the gold standard for all State cancer registries. Where the SEER Program provides statewide cancer registration, such as in my home State of Iowa, in Hawaii, in Connecticut, in New Mexico, and in Utah, there is no need to duplicate these highly successful cancer registration programs. Where the SEER Program provides cancer registration for large urban areas, including Atlanta, Detroit, San Francisco, and Seattle, the proposed National Cancer Registration Program should serve as a vehicle to allow expansion of these SEER registries to provide statewide cancer registration. It is therefore essential that the original intent of the SEER Program be maintained to continue to provide its very high quality and representative cancer incidence data, to continue to support a large number of research projects dealing with the etiology and prevention of cancer, to continue to provide cancer registration method development, and to continue to provide the gold standard for quality control of cancer registration nationwide.

Mr. President, I have discussed with Senator LEAHY the importance of maintaining and enhancing the SEER Registry Program in order that the new National Cancer Registration Program and the SEER Registry Program

complement and not duplicate these important cancer surveillance efforts. We have worked out minor modifications in his amendment that will assure coordination and collaboration between the National Cancer Institute's SEER Program and the proposed National Cancer Registration Program.

I commend Senator LEAHY for this amendment and his willingness to work with me to address my questions. I urge my colleagues to recognize the vital role cancer registration plays in our war against cancer and to support this amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the manager's amendment be considered and agreed to, and that the motion to reconsider be laid upon the table.

Mr. HATCH. Reserving right to object, it is our understanding that if there are some difficulties—because we have not had a chance to look at it; it has been represented to us as merely putting the various portions of the bill together—if there are any difficulties, we will work them out.

With that understanding, we will not object to this because we do want to proceed.

Mr. KENNEDY. Mr. President, I want to give the assurance to the Senator that I would certainly want the amendment as portrayed and as described. And we will work with any Member here to ensure that it does conform with that understanding, because that is what is intended. We have been legislators long enough to know that at times, because of drafting errors and other factors, that occasionally—it is a rare occasion, but occasionally—the proposed amendment does not conform with what is being represented. And we will certainly address that issue on floor before any final passage.

Mr. HATCH. If I could still reserve the right to object, and I do not believe I will.

It is my understanding that they had placed in this revised substitute or revised amendment package my amendment to have a fetal tissue bank; is that correct?

Mr. KENNEDY. I had an inquiry about the Glenn amendment language. I believe the language was worked out in a satisfactory way.

Mr. HATCH. Is it also true my amendment establishing a fetal tissue bank is also made part of this?

Mr. KENNEDY. The Senator is correct.

Mr. HATCH. Then I have no objection.

Mr. KENNEDY. I want to make it clear that this is an amendment in addition to those included on the list. But we would incorporate all those that were referenced by the majority leader, and we ask unanimous consent that it be permitted to be considered. And then we would effectively vitiate the order on those amendments that were included in the majority leader's request.

Mr. HATCH. Reserving the right to object, it is my understanding that my fetal tissue amendment is in there. But where I applied it only to the ectopic pregnancies and spontaneous abortions, it now includes induced abortions.

Mr. KENNEDY. The Senator is correct.

Mr. HATCH. I am not going to object to it because I want this bill to proceed today, but I would have limited that amendment to ectopic pregnancies and spontaneous abortions. I do have a desire for fetal tissue research to go forward, and I believe that we would have more than enough tissue from ectopic pregnancies and spontaneous abortions to satisfy all of the needs of fetal tissue research.

But I lost on the amendment.

While I object to the inclusion of this provision I will not object at this time in order for the bill to proceed.

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

So the amendment (No. 1753) was agreed to.

EMPLOYMENT INFORMATION AND CANCER REGISTRIES

Mr. WELLSTONE. Mr. President, I would like to thank the managers of the bill for accepting my amendment to help researchers analyze quickly employment-related causes of cancer. It is one step in the timely prevention and control of this epidemic.

Cancer researchers say they need uniform, national data to help them understand the causes of cancer, and how to prevent and control it. My colleague, Senator LEAHY, had proposed, as an amendment that has also been accepted, the creation of cancer registries for the systematic compilation of records in each State with respect to all cases of cancer. My amendment to Senator LEAHY's proposal will require that the registries also maintain records regarding the nature of the work and industry in which each cancer patient was employed. Researchers can then use this kind of information to run quick screening programs, through computers, that associate particular kinds of cancers with particular jobs, before cancer clusters appear. It is an important step on the road to spinoff studies that can identify actual carcinogenic agents.

There is an established association between occupation, or occupational exposure to carcinogens, and high risk of several kinds of cancer. Examples include:

Highway workers with elevated incidence of leukemia;

Farm workers with several kinds of cancer, possibly associated with pesticides;

Workers exposed to asbestos with elevated incidence of both lung cancer and mesothelioma;

Rubber workers with elevated levels of bladder cancer; and

Dry cleaners with elevated incidence of bladder cancer, due to exposure to perchlorethylene.

Many cancer clusters are first identified by anecdote, such as workers and communities noticing unusually high rates of a particular kind of cancer. The existence of national data makes it possible to identify associations even if anecdotal evidence has not yet surfaced. For example, the information on dry cleaners and bladder cancer was discovered by an epidemiologist who programmed a data base in Wisconsin to search for associations. With a larger base of information, more such findings become possible.

Because cancer is associated with so many different agents, it is important to have as large a population to study as possible, with as many variables as possible. Adding occupation to other demographic information, in the context of a national data base, can help focus more quickly on the factors contributing to a cancer cluster.

There are no existing databases on a national level that currently compile and coordinate information on industry, occupation, and cancer.

More remains to be done. Much cancer registry information is drawn from hospital medical records, which vary in the way they identify industry and occupation. The National Institute for Occupational Safety and Health has developed a standard industry and occupation code which is now being implemented by county health departments in filling out death certificates. However, such standardization is difficult in the currently fragmented system of health care record keeping.

We must also adequately fund analysis of the data, once it has been collected, so that the connections that can save people's lives are made as quickly as possible. Follow-up investigations that learn about occupational history through interviews, and search for related carcinogenic agents, must be funded.

This amendment will certainly lead to the compilation of a great deal of valuable information, just as it draws attention to the critical need for further efforts. It is crucial to investigate the impact of workplace hazards on the epidemic of cancer, and I am pleased to have the opportunity to add this vital element to this very timely and important legislation.

Mr. KENNEDY. Mr. President, I ask, then, that the consent order that referenced the Senators' amendments that had been included in the majority leader's order be vitiated.

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

AMENDMENT NO. 1754

(Purpose: To impose certain requirements with respect to surveys of sexual behavior)

Mr. KENNEDY. 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 Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1754.

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

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

The amendment is as follows:

At the appropriate place insert the following:

SEC. . REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of sections 491 and 492 of the Public Health Service Act.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I have a secondary amendment and, after reading, I ask it be set aside so Senator HATFIELD can offer his amendment. But I have a secondary amendment to the Kennedy amendment.

AMENDMENT NO. 1755 TO AMENDMENT NO. 1754

(Purpose: To impose certain requirements with respect to surveys of sexual behavior)

Mr. SIMON. 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 Illinois [Mr. SIMON] proposes an amendment numbered 1755 to amendment No. 1754.

Mr. SIMON. 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:

In lieu of the matter proposed to be inserted, insert the following.

SEC. . REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of section 491 and 492 of the Public Health Service Act; and

(2) the Secretary, in accordance with the provisions of Title II of this Act, will make a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

Mr. SIMON. Mr. President, I ask unanimous consent the amendment and the secondary amendment be set aside so Senator HATFIELD can offer his amendment.

The PRESIDING OFFICER. Is there objection?

The Senator from Indiana.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HATFIELD. Mr. President, I have an amendment that I intend to discuss for a few moments. This is an amendment of great consequence, and I only want to say it strikes to the very roots of our society and our humanity.

I would remind my colleagues that for the past 3,000 years a majority of people on this globe have considered that human beings and human life were sacred, that man was made in the image of God. That has certainly been the Judeo-Christian view of humanity.

But Mr. President, this view is changing.

At a recent meeting of the International Congress of Genetics, a leading scientist made an unusual proclamation: "What the ability to manipulate genes should indicate," he said, "is the very deep extent to which we are (merely) biological machines. The traditional view is built on the foundation that life is sacred, that a monkey is a monkey and a flower is a flower. Well, not anymore. It's no longer possible to live by the idea that there is something special, unique or sacred about living organisms."

Only a few months earlier, the New York Times had editorialized:

Life is special, and humans even more so, but biological machines are still machines that now can be altered, cloned and patented. The consequences will be profound, but taken a step at a time, they can be managed.

I find these views on how genetic manipulation is altering our traditional understanding that life is sacred profoundly disturbing. These reductionist notions about life are unfortunately becoming part of the new revolution in genetic technologies. Using advances in genetic technology, it is now possible to snip, insert, recombine, rearrange, and produce genetic material. Biotechnologists are manipulating living matter just as our ancestors were able to heat, melt, and solder together inanimate matter.

Over the last several years, it has become increasingly apparent that the dramatic advances in biotechnology have outdistanced the legal and ethical parameters that we have in place to deal with them. As society scrambles to cope, genetic engineers are beginning to assume a new role in our evolutionary scheme. They are using their new-found abilities to alter the blueprint of life, to apply traditional engineering values such as efficiency, utility, and predictability to the manipulation of life forms. Scientists are currently inserting human genes into animals, and beginning the process of altering the genes of humans. Many predict that within a few decades, our biotechnologists could assume the roles of creator and designer of the biotic community—from microbe to man.

The short-term benefits of this extraordinary new power are dazzling. Cures for hereditary diseases, a new green revolution in agriculture, miracle drugs, an end to human infertility are all being predicted for our future. My support for increased congressional review of this research should not be misconstrued as opposition to this research or opposition to seeking truth wherever we may find it. I want to make that point very clear.

No Senator is more committed to seeing these research goals realized than I.

I have often come to this floor, Mr. President, to proclaim the virtues of an increased Federal commitment to medical research across the scientific disciplines. I have called for a reordering of our Nation's research priorities from activities focused on improving the capability to destroy life to those which enhance life. The research conducted by the National Institutes of Health is, in my opinion, one of the Federal Government's greatest gifts to the Nation; it is the gift of improving the human condition by alleviating the pain and suffering associated with disease. As deep as my respect is for the medical research community, Mr. President, I stand here today deeply concerned about the future use of research findings.

Dr. Vander Bush, one of our greatest scientists, once said that we have to make those researchers and scientists in the laboratory a little bit better aware of the kind of world in which they are placing their findings.

History has taught us that every new technological revolution brings with it both benefits and costs. The more powerful the technology is at harnessing the forces of nature, the greater the potential for disruption. Society's experience with both the nuclear and petrochemical revolution bear our this truth.

For example, the promise of cheap nuclear power may be important to an impoverished country, and yet, with this energy source comes the oppor-

tunity for another country to join the community of nations that are nuclear weapons-capable—adding yet another proliferation problem.

Additionally, although technological breakthroughs in the automobile industry have induced dramatic increases in automobile fuel efficiency standards, our Nation and the world remain utterly dependent on finite fossil fuel resources. Assuring access to these resources has, and will continue to lead oil-dependent nations to use military force to secure that access.

Moreover, each day Americans suffer the adverse health consequences of increasing fossil fuel use. Automobiles alone contribute nearly one-half of the human-caused nitrous oxide, two-thirds of the carbon monoxide, one-half of the hydrocarbons in industrialized countries, as well as most of the airborne lead in developing countries. This is part of the price; part of the cost.

I am not arguing that against the use of the automobile but I recognize that society continues to pay a high price for its emergence in our technological revolution. I recognize the need for freedom from excessive Government restraints and detailed regulation, but we must also ensure that society has an opportunity to evaluate new products and the implications of new scientific frontiers.

A few years ago, I had a chance to visit with a prominent genetic scientist about the ethical issues raised by genetic engineering. He said to me that science has only two options when dealing with this new technology: one is to stop research altogether and the other is to discover what science can achieve and then turn the results over to society to decide how it is to be used. Congress—as the elected representatives of the people—must play a role in making these important decisions.

I am troubled, however, that such a monumental policy decision is destined to fall so squarely on the shoulders of the U.S. Patent Office. The underlying ethical decision transcends our present laws, particularly our patent laws. It transcends our national borders. It transcends the profit motives of the marketplace.

The decision to patent is more than a technical question of patentability. The direction and use of biotechnological research is a question of profound ramifications, one that I believe should not be made solely by Patent Office officials whose primary guide is the century-old patent law.

Nor should it be made by the dictates of the marketplace. I am reminded of when one of the first genetic engineering firms, Cetus Corp., went public. Cetus raised $120.2 million, in one of the largest stock offerings in the history of Wall Street. There is certainly more at stake in the direction and use of biotechnological research than profitability.

There is also a responsibility on the scientist. Scientists must be more aware, as Dr. Bush said of the kind of world in which they are working and consequences of their research. One area that troubles me greatly is the so-called germ-line eugenic engineering. It is one thing to use biotechnology to ease the suffering of life already in existence. It is quite another to create life.

This is not the first time that I have come to the floor to raise this issue for my colleagues. In 1987, the Patent Office issued a notice that it would begin considering patent applications for genetically engineered animals. Because of my concern about the ethical, economic, and environmental questions involved in the Patent Office's unilateral decision to allow the animal kingdom to be patented, I offered an amendment to the 1987 supplemental appropriations bill that prohibited the Patent Office from using funds for patenting genetically engineered animals. The amendment was passed but it lasted, of course, only 1 year, the life of the appropriations bill.

In February 1988, I again introduced legislation, this time to place a 2-year moratorium on animal patenting. Unfortunately, the Patent Office proceeded to issue a patent on what has become known as the Harvard Mouse, a genetically engineered mammal whose cells had been altered so as to contain a cancer-causing genetic sequence.

Interestingly, in June 1989, the European Patent Commission rejected a patent application by Harvard University which was virtually identical to the patent granted in the United States. The Commission in Europe cited both legal and ethical grounds for its rejection of the patent request.

Today U.S. patent requests are pending on over 150 genetically engineered animals, many of which contain human genes. In the 4 years since the Harvard Mouse was patented, we have made virtually no headway toward addressing this controversial area.

The House of Representatives has taken steps to address parts of this complex issue. A bill passed the House in the 100th Congress by Representative Kastenmeier declaring that human life is not patentable. The House Judiciary Committee held hearings on the bill in the 101st Congress and it was favorably reported but received no final action.

It is time for this body to accept its responsibility and take a more active role seeing that policy is developed in this area of immense scientific and moral complexity. Congress meant to investigate such concerns. We established the Biomedical Ethics Board in 1985 to do just that, but unfortunately the Board and its advisory committee became significantly delayed and never prepared the reports on developments in genetic engineering that were originally envisioned.

Other than the Biomedical Ethics Board, which is for all practical purposes no longer functioning, no congressional review board or advisory committee currently exists to make reports and recommendations to Congress on advances in genetic technology. And over the last 7 years, the ethical, economic, and environmental concerns about this technology have become more acute. Recent actions by researchers at the National Institutes of Health underscore the urgent need for congressional oversight of this field.

Last year, the international scientific community was jolted when the NIH announced that it planned to seek patents on 340 sequences of genes from the human brain. Only months later, the NIH applied for patents on over 2,000 more human gene sequences. The Patent Office has yet to rule on whether these gene sequences are patentable, and in the meantime, a high level debate is continuing both here and abroad on the merits of these patent applications which pertain to genetic matter of unknown utility.

Mr. President, I ask unanimous consent that a series of recent articles on this subject be inserted in the RECORD.

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

[From the Washington Post, Feb. 13, 1992]

NIH SEEKS PATENT PROTECTION FOR HUMAN GENES

(By Malcolm Gladwell)

The National Institutes of Health yesterday filed patent applications on 2,300 human genes, in an extension of its controversial attempt to control the commercial exploitation of federal genetic research.

The applications, which will be added to a much smaller patent filing made by NIH last summer, mean that the U.S. government is now laying claim to about 5 percent of the genes found in the human body.

The move was criticized by some scientists, who said that the government's policy is an abuse of the patent system and could hinder development of new genetic therapies.

But NIH Director Bernadine P. Healy said yesterday that the patent filing was only a "defensive" measure to preserve the agency's legal options while it decided what is in the best interests of science.

"We would like to foster and encourage the debate over gene patenting," she said. "This is something that needs to be debated in the international community." Because the genes under consideration are likely to be the basis of a new generation of genetic therapies and drugs, she said, "I don't think there is any doubt that the biotech industry is going to be as important to this country as the car industry was."

The government action yesterday resulted from the work of a team headed by J. Craig Venter, a scientist at the National Institute of Neurological Disorders and Stroke. Venter and his colleagues, like numerous scientists around the world, are engaged in the process of decoding the strands of DNA that make up the estimated 50,000 to 100,000 human genes.

Venter, however, has taken a shortcut. Instead of decoding the entire genetic sequence and then determining exactly where each gene lies and what function it plays in the body, he has decoded only one critically distinctive fragment of the gene that can be used to identify and explain the entire gene much as a fingerprint can be used to identify a man or woman.

Last summer, Venter published 347 of these fragments in the journal Science. Today, in the journal Nature, he published another 2,300 fragments; by the end of this year, he predicted that both his lab and others will have a reading on about one-fourth of all human genes.

Under patent law there is no prohibition against patenting something that occurs naturally, so long as it is packaged in something manmade. That is what Venter has done, by taking the key fragment of genetic code and placing inside a man-made molecule. The patent application is filed on the entire compound molecule.

A more difficult issue concerns the requirement that an inventor prove his creation has "utility" and precisely describe its practical use. In the case of a gene, for example, a complete description would detail the functions that strand of DNA plays in the body. But because of Venter's shortcut, he and his team do not yet know what each of the genes actually does. It is not known what utility the patent applications claim, although attorneys speculated that the applications will stress the material's use as laboratory reagents or some similar function.

Whether this will be a problem at the patent office is unclear. One factor in NIH's favor, according to Washington patent lawyer Iver Cooper, is that U.S. patent law "doesn't ask for much in the way of utility," compared with laws in other countries.

But while the utility requirement may end up not being a problem for NIH, many biotech industry officials and scientists say that it should.

They say that if the patents are granted on such flimsy utility grounds, the system will be flooded with vague patent claims, resulting in rewards for those who may not have done the work to actually prove a gene's specific usefulness.

"It's premature to give them a patent," said Norton Zinder, a geneticist at Rockefeller University. "They don't even know what they have."

Other scientists worry that giving NIH control over so many genes would give the agency undue power over the future of the biotechnology industry, discouraging some companies from pursuing certain projects and allowing NIH to decide who gets access to which promising genes.

"If you're in the business of making therapies or diagnostic tools," said John McLaughlin, general counsel for Genentech, a genetic-research firm, "you could find yourself in a tough position if Uncle Sam's got [the patent] or wants to give it to someone else."

However, Healy said that such fears are unfounded. Under international patent law, the NIH had to file for patents on the genes at the same time as Venter's paper was published or the agency would forever lose any claim to the material. The filing, she said, was an interim "defensive" measure while the NIH negotiates with other countries and scientists about how best to "foster the growth of the new and emerging biotech industry."

Reid Adler, head of the NIH office of technology transfer, also pointed out that if the NIH did not apply for patents on the Venter sequences, and the information entered the public domain, even greater problems might result. Companies could be dissuaded from pursuing certain gene research because they would be unable to get patent protection for their products.

[From the Washington Post, Oct. 28, 1991]

NIH'S RUSH TO PATENT HUMAN GENES

(By Larry Thompson)

The National Institutes of Health appears to be trying to corner the market on human genes.

Last summer, the federal government's bastion of biomedical research applied for patents on 347 human genes—the naturally occurring molecules that dictate the form and function of the human body. Next month, NIH says it expects to file a second application on 2,000 more human genes. Until now molecular biologists had patented only a few human genes, one at a time, as they were identified and used to make biotech products such as insulin and the blood-clot dissolver Tissue Plasminogen Activator (tPA).

The magnitude of NIH's action has ignited a firestorm of criticism. Biotech industry officials worry that government patents will stifle commercial development of gene-based products. Scientific leaders in Europe and Japan predict the filing will trigger an international race to nail down protective gene patents for their own countries.

Among the most vehement objectors has been James D. Watson, who shared a Nobel prize for discovering the gene's double-helix structure. "This offends our sense of justice," said Watson, who now directs NIH's human genome project, a massive program to identify all the estimated 50,000 to 100,000 genes in the human body. Watson's program has been pursuing a much more open approach to finding genes.

Craig Venter, leader of the relatively small, 15-person laboratory within NIH's National Institute of Neurological Disorders and Stroke that is identifying the genes, said he is amazed by the controversy. Using a strategy rejected by genome project leaders, he can "rapidly and inexpensively" find the most interesting genes—the specialized subset of genes that is active in a given type of cell. Critics charge he is skimming off the genetic cream.

The British journal Nature has warned that Venter's approach could launch a "patent gold rush" with every country's labs trying to stake out its own genes. If NIH gets these patents, it will, in effect, control any dollar value that can be derived from their commercial use. While the potential wealth is unknown, the few biotech products already on the market—nearly all being manufactured with the aid of specific genes—have generated hundreds of millions of dollars in sales and will eventually reach billions annually.

"We don't look at patents as a fund-raising tool," said Reid G. Adler, who, as head of the NIH Office of Technology Transfer, filed the patent applications. Adler thought he was protecting the future of the American biotech industry. Once discoveries are described in scientific publications, Adler said, it is more difficult to win worldwide patents.

"I didn't want to miss the boat," he said. "Our primary goal is to get products developed. Having patent protection will enhance our ability to transfer this technology to companies. Without patent protection, companies won't spend the money to develop it."

Almost no one else sees it that way.

"This is a disincentive for small biotech companies," said Richard Godown, president of the Industrial Biotechnology Association. The patents could hamper small biotech companies trying to discover and market new gene-derived products. Companies might risk spending their limited venture capital to develop a product only to find that NIH already "owned" that gene.

BIG SCALE, LIMITED EVIDENCE

How can anyone patent a human gene? After all, they are naturally occurring substances that have existed in humans, and their ancestors, for millions of years.

To receive a patent, according to patent office officials, an "invention" must be novel, "non-obvious" to someone in the relevant field, and it has to be useful. The problem of patenting naturally made chemicals first arose years ago in the pharmaceutical industry. Penicillin, for example, is a natural substance produced by fungi, yet it was granted a patent. Moreover, a few human genes have been patented—but in the specially prepared form used to manufacture gene-based drugs.

But no patents have ever been issued on the scale proposed by NIH. And seldom have scientists sought such broad patents for a gene and its gene products—the proteins that cells would manufacture under instruction from the gene—on such limited evidence. Venter's gene-analyzing factory, unlike the efforts of the genome project, analyzes gene bits, not the whole gene.

Instead of determining the entire sequence of subunits that make up the gene—the series of "letters" that spell the message—Venter's group analyzes just enough of these newly discovered genes to show that they exist and that the same code has not been reported before. They then leave it to others to finish the time- and money-consuming job of analyzing the entire gene and the protein it makes. But by then, he and NIH will hold the patent.

This approach has been strongly attacked by Watson and others.

"I mean it is brainless work," Watson said. "This is a perfect case of a brainless robot." Science magazine quoted Watson as saying that "virtually any monkey" could run these robot gene machines.

Initially stunned by these attacks, Venter and his staff now take the criticism with some humor: Last week, technicians purchased gorilla masks and posed for photographs in front of their sequencing machines.

Brainless or not, does it qualify for a patent? Opinions vary. Patent attorneys have raised doubts because Venter does not know the utility of his new genes. Scientists working in this field also argue that what he did is totally obvious.

While refusing to discuss the NIH application directly, Edward E. Kubasiewicz, director of the patent office's biotechnology group, said that to get a patent for the "DNA that represents the gene, the person has to identify that gene, isolate it, purify it, put it in a different form than it has in nature, and give it a different utility than it has in nature."

Even within the NIH, the debate has a sense of free-for-all. NIH Director Bernadine P. Healy said she has no intention of blocking the next patent filing even though Watson opposes it.

"One of Jim's strengths is that he is deliciously blunt and has strong opinions on things," Healy said. "My belief, at the present time, is that this is a bit of a tempest in a teapot. I think the discussion has become a little silly because it has been elevated to the level of some moral, science policy, [an] ethical issue."

Meanwhile, Healy said, "the patent office will look at it and see if there is anything here that is patentable."

As it happens, the patent office says it will be a year before it can get around to evaluating any applications. Until then, major genome projects in the United States, Europe and Japan may be forced to spend millions of dollars on a gene-finding race just in case Venter and NIH get their patents.

[From the Christian Science Monitor, Nov. 27, 1991]

BRITAIN AND CONGRESS RESPOND TO CONTROVERSY SPARKED BY NIH PLAN TO PATENT GENES

(By David L. Wheeler)

WASHINGTON.—The British government and the U.S. Congress are responding to a growing controversy over a plan by the National Institutes of Health to patent genes.

The controversy began last month when scientific journals reported that the NIH had filed an application in June to patent 337 genes. NIH scientists know the chemical details of the genes and say they have some practical uses for them but do not yet know what they do in the human body.

Some scientists say that patenting such genes will discourage research since those who find the function of the genes would not be able to patent them.

The NIH patent application, and the possibility of a second application for thousands more genes, has attracted interest from every quarter of goverment—including Congress and the Office of Management and Budget. It is unclear how a decision will be reached on whether the NIH will withdraw the application or file a second one.

WITHIN NIH MANDATE

NIH Director Bernadine Healy says she supports the decision to file the application because it its within the NIH's mandate to put research to practical use quickly. NIH officials say they had to file the application before details of the genes are published in June or lose patent rights to the genes in foreign markets. Dr. Healy says that the final decision will be made by Louis W. Sullivan, Secretary of Health and Human Services.

Meanwhile, the Medical Research Council in Britain, a counterpart to the NIH, may file a British patent application on the genes it has found, saying that it can't wait for the United States to make up its mind.

"It's just not good enough to say this is all going to work out," said Sarah Eccles, a technology-transfer officer with the council, in a public meeting at the NIH this month. "I have a problem now."

Ms. Eccles said last week that no final decision had been made by the council on patenting. The British have genes obtained by methods similar to those used at the NIH and want to make public the details of those genes—known as their "sequences"—without losing the rights to them.

The Medical Research Council also plans to keep some information on the sequences in a separate computer data base, breaking what many American scientists believe is an international understanding about the open sharing of information.

The data base, Ms. Eccles said, will be free to academics. University scientists interested in using the data base will have to file an application to get a password and sign a "non-commercialization agreement" forbidding them from developing commercial products from the sequences.

The British council will charge a business about $9,000 for unlimited use of the data base by one person, and about $1,800 for each additional person.

At the NIH, officials are linking the patenting issue to health-care costs, saying that if the agency gives away its inventions it may lose control over the pricing of medical treatments that are developed from them.

MAY SPUR CONGRESS TO ACT

Dr. Healy said that attacking the application submitted by the NIH would not "resolve the inevitable policy issue of what is patentable in the constellation of our expanding knowledge base of human, animal, and plant genetics."

The furor over the gene-patenting applications may spur Congress to clarify an area in patent law that has long been fuzzy; when research scientists can use patented inventions without paying licensing fees to the patent owner. The House Judiciary Committee may write legislation that would create an explicit "research exemption."

The Patent and Trademark Office, the ultimate decision maker in the case, probably will not take up the NIH's first application until February, said Reid Adler, director of the NIH Office of Technology Transfer. Mr. Adler said information about a second set of genes—in the range of 2,000—would not be ready for publication for four months. That should give the government time to make a decision, he said.

EFFORTS COULD BACKFIRE

Dr. Healy pointed out that other patent applications for genes of unknown function may have been filed at the patent office but never made public. Efforts to force the NIH to back down from its application could backfire on critics, she said. "If NIH should not file such patents, does that mean no one should?" she asked. "Should NIH use its authority over grantees to make such restrictions on their patent applications?"

In the NIH meeting, reaction to the application was mixed. One lawyer opened a session by looking at Mr. Adler and announcing: "I have come not to praise Reid but to bury him." But another speaker noted later that "Reid seems to have been exhumed."

Lawyers said they would prefer that the patent rights be owned by the NIH rather than a private company. Harold C. Wegner, acting director of the Intellectual Property Law Program at George Washington University, said he believed "NIH will do the most pro-competitive, pro-American, pro-research thing" it wins the patent rights to the genes.

[From Science, Feb. 21, 1992]

NIH GENE PATENTS, ROUND TWO

(By Leslie Roberts)

If you find yourself in a hole, the saying goes, stop digging. Although Bernadine Healy, the director of the National Institutes of Health, may not think she landed in a hole when NIH attempted to patent hundreds of gene fragments last June, much of the scientific community does. And when it learns of NIH's latest initiative, it will probably conclude that she's digging herself in deeper: Last week, NIH filed a second patent application on 2375 additional gene fragments, which represent roughly 5% of all human genes.

The fragments at the heart of the dispute were identified by NIH researcher Craig Venter, who is sequencing them at the startling rate of 168 a day. Genes clearly are patentable once they have been isolated and characterized. But trying to patent these fragments, Venter and NIH are proposing something entirely different. Venter hasn't characterized complete genes. Rather, he and his colleagues simply select random clones from a collection of complementary DNAs, which correspond to active genes. Then, using automated sequencing machines and robots, they sequence a short stretch of each one to create a "tag," or identifier, that can later be used to pull out the full gene.

Critics here and abroad, led at first by Nobel laureate James Watson, the head of the NIH genome effort, blasted the first application as a land grab, a preemptive strike that would promote a worldwide stampede to garner patents on essentially meaningless pieces of DNA. They said it would foster secrecy among scientists, destroy the essential—and fragile—international relations on which the Genome Project depends, and hamstring the biotech industry (*Science*, 11 October 1991, p. 184).

Since then, the criticism has become notably less shrill, though perhaps no less intense. The normally outspoken Watson is conspicuously absent from the most recent debate—sources say Healy admonished him to keep his complaints to himself, and he did not respond to *Science*'s requests for an interview. The biotech industry, at first vehemently opposed, has adopted a wait and see attitude. Though deeply divided on whether patents are the right way to proceed, biotech leaders now believe NIH had no choice but to file the patent application, given uncertainties in the law, says Lisa Raines of the Industrial Biotechnology Association.

But despite a more conciliatory tone, opposition among academic scientists has, if anything, mounted. In recent weeks, Healy, her boss, Health and Human Services (HHS) Secretary Louis Sullivan, White House science adviser D. Allan Bromley, Patent Commissioner Harry Manbeck, and other senior officials have been barraged with complaints. First with a grievance statement was the American Society of Human Genetics. Next came the international Human Genome Organization. And in late January, the 12-member committee that advises NIH and the Department of Energy on the Genome Project unanimously "deplored" Healy's decision and urged an expedited—and open—review of the application.

And all this was before NIH's second—and far more extensive—patent application, which can only add more fuel to the fire, both because of the huge number of genes NIH is claiming and because at least some critics see it as evidence that Healy has dug in her heels. "I believe her views are fixed and she is unprepared to reconsider her decision," said Paul Berg, the Stanford Nobel laureate who heads the NIH genome advisory committee. Conceding that Healy has expressed a willingness to discuss the committee's concerns, Berg added: "The most generous interpretation I can offer is that she is seeking to make this some kind of a test case, one that might probe the limits of patent law in this area."

Healy insists that her mind is not made up. At a press briefing last week Healy said the decision—which she stresses has the full backing of HHS Secretary Sullivan—reflects an interim policy, "while the important debate unfolds about the best way to deal with the intellectual property" issues raised by Venter's approach.

As they have all along, Healy and Reid Adler, NIH's director of technology transfer, portrayed their strategy as a "prudent and responsible action" undertaken simply to preserve the agency's option of licensing Venter's inventions to industry. Without such patent and license protection, they maintain industry would be unlikely to in-

vest in developing such products. What's more, the decision had to be made immediately, Healy said, because if NIH did not file at the time Venter published his data—his second paper came out in the 18 February Nature, following a first paper in the 21 June 1991 Science—NIH would forfeit its rights to those genes. But, she emphasized, "this is not a statement that we believe that patenting this material is the proper thing to do now or for the future." In fact, she said, new alternatives to patents may be needed. And she vowed that NIH is committed to pursuing this debate here and abroad."

The biggest question that needs to be pursued is whether these snippets are or ever should be patentable. The critics charge that they are meaningless, since Venter does not know the biological function of the full genes or where they reside along the chromosomes. Says Berg: "NIH has opened Pandora's box, I don't believe anyone else ever thought of patenting bits and pieces of sequence that are meaningless functionally. It makes a mockery of what most people feel is the right way to do the Genome Project."

As Berg and others note, the project is committed to sequencing and deciphering the entire human genome, all of the genes as well as the 95% of the DNA that does not code for genes—an enormous task that could take 15 years. Then in waltzes Venter, sequencing small bits of DNA and laying claim to a substantial share of the human genes. "It is offensive," says Berg. To patent attorney Thomas Kiley, former general counsel at Genentech, Venter's strategy is the latest manifestation of an already unhealthy trend toward "insubstantial" patents based on "the means of making the discovery rather than on the discovery itself. [Venter's] tags," he says, "leave the hard work of deciphering the gene to someone else."

Not surprisingly, Venter and Adler are intent on dispelling those arguments. "These are not unknown fragments," asserted Venter at last week's press briefing. "There is so much information contained in the 300 to 500 base pairs that it is more specific than fingerprints at identifying you." Added Adler: "They are markers for chromosomes, and they are potentially useful as polymerase chain reaction primers [for amplifying and cloning the genes]." While conceding uncertainty over whether the fragments meet the utility requirement of patent law, Adler says, "there are a number of uses well short of biological function that [could] satisfy the law."

Such statements aren't likely to persuade the critics, who see Healy saying that she is not committed to patents while NIH seems to be doing all it can to see its applications succeed. It has, for example, narrowed the scope of its second application. "In the first application we did what most attorneys do: We claimed everything that reasonably follows from the actual research result," says Adler—in other words, the "tags," the full-length genes, and their proteins. Not only did the breadth of the first NIH claim draw the ire of the scientific community, but to Genentech's Stephen Raines, vice president for patents, it also reduced NIH's chance of success. This time, NIH has claimed the tag and the gene but not the protein. Raines suspects that Adler has recognized that "it is a little dangerous to ask for the world. As the claim gets narrower, that usually helps support the argument of patentability. I think Reid would very much like to see that patent issue."

In what seems to be a concession to the critics, NIH has agreed to make the application public within a few weeks. According to Adler, the patent commissioner has also agreed to an expedited review, a move welcomed by all because it could mean a decision in 1 or 2 years instead of 4 or 5.

As opposed as they are to the patent application, even the critics want to see it carried through to the end, to the Supreme Court if need be. "We need a definitive answer," asserts Berg. "Withdrawing the patent would resolve nothing." Indeed, he adds, even if NIH withdrew the application, Venter or others could file on their own.

Spurred on by this debate, the major countries participating in the Genome Project are attempting to clarify their policies—specifically, how to reap the economic benefits of the project while ensuring open exchange of scientific information. A new interagency committee, formed under the auspices of the Office of Science and Technology Policy, is looking at the broad implications of gene patenting and will report to Bromley by June. In England, where the Medical Research Council (MRC) has been accused of keeping its gene data secret, the government will announce its policy within a few weeks, says Dai Rees, the MRC secretary.

Both Rees and Healy agree that relations have improved since last fall, when the two sides were trading accusations across the Atlantic. "NIH was the first to be put on the spot," says Rees diplomatically. "It was easy for everyone else to be critical." Says Healy: "We are all in the same dilemma," adding that NIH is also talking informally with the French and Japanese. Once the national policies are sorted out, Healy, Rees, and others hope to engage in formal talks. Rees is pushing for an international agreement not to patent these gene fragments, but he doesn't see Healy clamoring for the same. "I don't think an agreement not to patent is out of the question for NIH," he says cautiously. "But I doubt whether it is the preferred course of action." Until a decision is made, academic and industry researchers will be left with uncertainty over what in fact is patentable—and the knowledge that within the next 6 months or so, NIH will file yet another patent application on several thousand more gene fragments.

THE ADVISORY COMMITTEE PROTESTS

"At the 3 January 1992 meeting of the National Institutes of Health Department of Energy Subcommittee for Interagency Coordination of Human Genome Research there was an extended discussion of the NIH decision to apply for patents covering the base sequences of short cDNA segments obtained by Dr. Craig Venter, and to file additional claims for thousands more such sequences as they are determined.

We are unanimous in deploring the decision to seek such patents. The subcommittee is particularly concerned that the claims widely reported in the press extend far beyond the partial cDNAs themselves to include the genes from which they derive and the proteins they specify. We believe such claims are inappropriate and deleterious to science because they establish false end points for identifying genes and their function. Already, the publicity attending these claims has generated a wave of consternation amongst scientists here and abroad because it is widely held that such practices will create undesirable distortions in the conduct of basic biomedical research. Our immediate concern is that the filing of such claims undermines the activities of the Human Genome Project. There is also a strong likelihood that the pursuit of such patents will set off an international "patent race" and thereby compromise or destroy the international collaboration that we regard as essential for the work ahead.

We doubt seriously the social utility of patents that aim to control the "raw material" from which the discovery efforts of others will proceed and of patents on substances whose biological activity and utility remain to be established. Indeed, the ensuing uncertainty and confusion over competing ownership claim is likely to delay substantially the potential benefits from the Human Genome Project for the biotechnology industry and the American public.

Our discussions lead us to conclude unequivocally that the NIH claims for the patentability of random partial cDNA sequences are potentially damaging to the very scientific efforts NIH is promoting. However, because such patent claims have already been submitted, we believe that it is in the public interest and in the interest of science to determine promptly whether such patent claims meet existing legal standards and whether such standards are appropriate to the present case. To benefit both the scientific community and the biotechnology industry that determination should be authoritative, so as to govern all such patent applications, by whoever filed.

Accordingly, we request the cooperation of all relevant institutions of the federal government in obtaining that determination in an expedited and open process in which the views of all interested parties may be heard and considered. For that purpose, we request that NIH open to public inspection and copying their patent application(s) and the claims that it has filed as well as continuing proceedings regarding them before the United States Patent and Trademark Office. This would afford interested parties opportunity to comment."

Mr. HATFIELD. There is a clear need for Congress to take action to calm the waters in this sensitive area of international scientific interest.

The very fact that the NIH has applied for the patents raises the specter of removing the building blocks of life from the common possession of us all and shifting them to the private use and profit of researchers or corporations. It is predictable that major biotechnology and chemical companies will increasingly compete for control and ownership of the gene pool.

The NIH actions also raise the question of how many genes, cells, or body parts are patentable. Is the human body, as was suggested, simply a biological machine that can be engineered and patented?

Indeed, our definition of humanness is increasingly becoming blurred. If we can transfer human traits to animals, are we next to transfer animal traits to humans? And what do we call the product of this blend? For many Americans, future shock may be just around the corner. Is murder still murder if the victim is not human—or is it something less? And what about slavery? These are questions that must be addressed as this genie swirls from its bottle.

Mr. President, just after the United States dropped the first atomic bombs on Hiroshima and Nagasaki, the American poet E.B. White wrote the following words:

The quest for a substitute for God ended suddenly. The substitute turned up; and who do you suppose it was? It was man himself, stealing God's stuff.

My deep concerns about the lack of a coherent policy governing the patenting of life is inextricably linked to this notion of stealing God's stuff. I believe the blurring of God's work with man's work is tremendously dangerous and at least calls for a halt for a moment of assessment and introspection.

The effect of species alteration could also have a great impact on the delicate balance of the environment. The creation of a new species and the effect of its release into nature cannot be completely predictable, and should be carefully considered. Larger animals with increased reproductivity could alter depletion patterns in the ecosystem and native gene pools could be driven extinct in the process.

Morever, deep-rooted religious and ethical questions surround the patentability of life and the right of man to manipulate to biotic community to meet his needs. Such a circumstance tests our reverence for life.

Again, the Patent Office has no way of dealing with these various moral, international, economic, and environmental questions which arise from the patenting of human genes, cells, organs, or the patenting of genetically engineered animals. As I have stated many times before, I strongly believe that it is the responsibility of Congress to carefully consider the broad ramifications of the technologies it encourages through patenting. This careful examination has not taken place in the case of the genetic alteration and patenting of human genes and body parts, or in the case of the creation and patenting of transgenic animals.

My amendment provides the expertise and sufficient time to conduct a responsible congressional review of the genetic alteration of humans, the patenting of human body materials, and the patenting of genetically altered animals. My amendment provides for an advisory committee to the biomedical ethics board. This advisory committee will include those knowledgeable in health care, biomedical research, natural and social sciences, ethics and theology. The board would present this body with recommendations on appropriate legislative steps to maximize the benefits of gene technology while minimizing its negative impact.

For as we move forward into greater biological understanding of our bodies and the other life forms with whom we share the planet, we must never lose a sense of the sacredness of life. We must remember that much of the religious fabric of this Nation and many aspects of our constitutional system of rights is based on the view that life is our most precious commodity and it deserves our utmost respect and reverence.

Let us look but to the Declaration of Independence of our own national life. And I quote: "We are endowed by our Creator with certain unalienable rights." Among these life is the most basic. Therefore, many of our political rights that are not bestowed by Government, but are instead endowed by our Creator.

I do not, after all, believe merely in my right to be; I believe in the right of all life to be. But whatever our advances in genetics and the potential benefits we may derive from them—and they are many—we may never allow ourselves to view life—especially human life—as a machine or commodity. Much depends upon the role of Congress in the evaluation of a rational policy to govern this important and rapidly advancing area.

Mr. President, I would be less than frank if I did not say there is a great outcry from some of the laboratories and people involved in biomedical engineering and research. I suppose repetition being the first law of learning, I must reemphasize as I end my remarks that this is not a case of a church voice attempting to tell Galileo he must no longer experiment with knowledge or look for knowledge. That is certainly not the case.

This is simply a voice that is being raised at a time before the genie gets completely out of the bottle. I am asking that we do what we should have done when we discovered E equals MC squared: Look into the ethical, moral, and the environmental impacts it would have in its utilization.

I have talked to my colleagues as well about this. Two of my colleagues have written a "Dear Colleague" letter indicating that this is something sudden, something new. My remarks today should set the historic fact in place that we have been looking into this issue for a number of years dating back to specific action in 1985. And the science adviser to the President is addressing this issue, and that report is not here yet for our consideration.

I had intended to offer this as an amendment to the NIH reauthorization. However, I have now received the assurances of Senator KENNEDY and Sentor DECONCINI from the Committee on Labor and the Committee on the Judiciary respectively, that hearings will be held in each of those committees pertaining to the many issues raised by the patenting of both animal and human life. We have also agreed to ask the Office of Technology Assessment to conduct an additional study in this area. On the basis of these assurances, Mr. President, I will not send my amendment to the desk at this time.

I believe we have at least raised the issue and obtained the attention by many important groups in this community, both political and scientific, to press on to get some kind of an assessment, some kind of an evaluation of this very, very serious issue.

Mr. LAUTENBERG. Mr. President, I am pleased that Senator HATFIELD has agreed to withdraw his amendment. As cochair of the congressional biotechnology caucus, I would like to state my opposition to the Hatfield amendment for the record, and explain my reasons for opposing it.

The Hatfield amendment to H.R. 2507 would have prohibited the U.S. Patent and Trademark office from issuing patents on most genetically engineered materials for at least 3 years, with an option to extend the ban for another 3 years. As drafted, this amendment would have damaged public health, devastated the American biotechnology industry, and hurt our economy greatly.

Genetic engineering or recombinant DNA technology, which involves the analysis and alteration of genes and proteins to make useful products, is an important branch of biotechnology. Biotechnology is of vital importance to the United States and world progress in many fields, but particularly in improving health care.

Genetically engineered drugs and vaccines are now available to treat a number of diseases and conditions, including diabetes, dwarfism, hepatitis, heart attacks, anemia, leukemia, and organ transplant rejection. Medical products currently in development by the biotechnology industry have the potential to wipe out hundreds of diseases, including cancer, arthritis, AIDS, Alzheimer's, sickle cell anemia, and cystic fibrosis.

These breakthrough drugs have been developed by using human genes and cells to manufacture pharmaceutical proteins that harness the body's own disease-fighting capabilities. For instance, using certain kinds of genes, biotechnologists can enhance the body's immune system, interfere with the replication of harmful bacteria and viruses, and replace proteins that health bodies manufacture but sick bodies do not.

If the Hatfield amendment had become law, much, if not all of this ongoing biotechnology research would have come to a grinding halt. By prohibiting the issuance of patents on most of the genetically engineered materials that are the essence of the biotechnology industry, millions of patients who are without current treatment would have been denied access to the breakthrough drugs the biotechnology industry is developing. That's because no sensible company would invest the $100 to $200 million it takes to develop a drug if a competitor could pirate the technology without penalty. No company would make that investment without a guarantee that their invention would be protected under patent. Nor would we ask them to. Aside from the negative effect on public health, the Hatfield amendment would have brought to a halt the remarkable growth of the biotechnology industry in America.

The biotechnology is currently a source of enormous economic vitality for our economy. American biotechnology's net exports are in excess of $600 million and growing every year. In 1991, sales and exports of biotech products approached $4 billion. That's double 1990's total and four times as great as that of just 2 years ago. Sales are expected to make biotech a $50 billion industry in the next 10 years.

Biotechnology is not only important to America today; it's an industry that's critical to America's future competitiveness in the world marketplace. As one of the few industries in which the United States leads the world, the biotech industry can help us turn our economy around. It is one of a number of growing industries that can help pull us out of our economic doldrums and help us regain our leadership in the world's economy.

Our success in nurturing biotechnology will help determine whether America emerges victorious from the new global economic competition, or follows the Soviet Union into decline. To paraphrase an old saying, as biotechnology goes, so goes the Nation.

Though we are currently the world leader in biotechnology research, development, and manufacture, it has been the industry's ability to protect the results of very costly research and development efforts in biotechnology that has enabled this American sector of industry to remain in the lead. The Hatfield amendment would be a fatal blow to the American biotechnology industry, removing any commercial incentive for the industry to do genetic engineering research. At the same time, foreign countries would continue to issue patents on inventions that would become unpatentable in the United States under the Hatfield amendment, putting our industry at a competitive disadvantage.

Mr. President, the Department of Commerce and the Department of Health and Human Services opposed this amendment, and I ask unanimous consent that a copy of their letters on the Hatfield amendment be included in the RECORD following my statement. I also ask unanimous consent that the letter from the congressional biotechnology caucus also be included in the RECORD following my remarks.

I want to thank Senator HATFIELD for his willingness to work out an acceptable compromise that addresses his concerns over gene sequencing by the National Institutes of Health without harming the biotechnology industry.

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

CONGRESSIONAL BIOTECHNOLOGY CAUCUS,
Washington, DC, March 31, 1992.

DEAR COLLEAGUE: We are writing to urge your opposition to the Hatfield amendment to the NIH reauthorization bill. This bill is scheduled for floor action today and we learned of the Hatfield amendment only late yesterday.

The Hatfield amendment, among other things, would prohibit the U.S. Patent and Trademark Office from issuing patents on a wide range of genetic engineering inventions. This prohibition would last three years, but would be renewable for a additional three year periods. Inventions such as human tissues, fluids, cells, genes genetic sequences, and animals would no longer be patentable even if these materials have been genetically engineered.

If the Hatfield amendment is enacted, a U.S. industry that leads and dominates the world could be lost. This young industry achieved remarkable growth and achievements in its first full decade—the eighties, and industry sales are expected to increase ten fold by the year 2000. The U.S.'s world leadership position in this industry and its net exports already in excess of $600 million are in jeopardy. Other countries—including Japan and many in Europe—will continue to issue patents on inventions that would become unpatentable in the U.S. under the Hatfield amendment.

It is ironic that we are scheduled to vote today on S. 654, the Biotechnology Patent Protection Act. This bill, introduced a full year ago by Patents, Copyrights and Trademarks Subcommittee Chairman Senator DeConcini and ranking minority member Hatch would strengthen patent protection for biotechnology inventions. The DeConcini-Hatch bill (S. 654) has been the subject of a Patent Subcommittee hearing and both the Patent Subcommittee and Judiciary Committee have unanimously reported on the bill.

The Hatfield amendment has never been introduced as a bill and has never been the subject of committee or subcommittee hearings or votes. We learned of this amendment only yesterday. We should not pass such an amendment.

Enactment of the Hatfield amendment would devastate the U.S. biotechnology industry. Without strong intellectual property protection little if any biotechnology research will be commercialized. Companies will not invest $100–$200 million to develop a drug if competitors can pirate the technology without penalty.

The U.S. is the world leader in the research and development of biotechnology. This new industry spent $3.2 billion in R&D last year and total revenues for the same period were only $5.8 billion.

Biotechnology has been identified as a "critical technology" that will drive U.S. productivity, economic growth, and competitiveness over the next ten years and perhaps the next century. We must not allow any last minute, ill-advised amendment to cripple this industry. We must not pass the Hatfield amendment.

Thank you for your consideration of this important matter.

FRANK LAUTENBERG.
HANK BROWN.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, March 31, 1992.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We wish to offer our views on what we understand Senator Hatfield will offer as an amendment to H.R. 2507, the National Institutes of Health Reauthorization Act of 1991. This amendment, as yet unnumbered, would place a moratorium on the patenting of human and animal genetic material until the ethical, legal, economic and social questions involved with the patenting of human gene sequences are resolved, and prohibit Federal funding of research in genetic engineering involving human or animal cells.

The Administration strongly opposes this proposed amendment. It would impose an indefinite moratorium on the patenting of human and animal tissues, cells, genes and gene sequences including research in which there is currently little dispute. The moratorium would lead us to forfeit our lead in biotechnology, where patent rights are a key to the large investment needed for product development. It would also put U.S. biotechnology companies at a disadvantage with other countries at a time when this is one of the few industries in which our Nation leads the world.

The ill-advised, unnecessary prohibition on Federal funding of research would severely impede the biomedical research endeavors on the National Institutes of Health (NIH). Further, this amendment could halt the progress on cures for numerous diseases and conditions.

Moreover, some of the proposed actions represent redundancies. Principal among these is the reinstitution of the Biomedical Ethics Board. Much of the information that this board would collect is already being collected in other venues. The National Center for Human Genome Research has devoted approximately five percent of its budget to the study of ethical, legal, economic and social problems associated with the mapping and sequencing of the human genome.

In summary, the Administration believes the language of this amendment is ill-advised, and potentially devastating to the competitive advantage of the U.S. biotechnology industry. Should this amendment reach the floor for consideration, we would urge its rejection.

Sincerely,

LOUIS W. SULLIVAN, M.D.

DEPARTMENT OF COMMERCE,
PATENT AND TRADEMARK OFFICE,
Washington, DC, March 31, 1992.

Hon. DENNIS DECONCINI,
Chairman, Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We understand that Senator Hatfield has proposed an amendment to H.R. 2607, the National Institutes of Health Reauthorization Act of 1991. This amendment would create a three-year moratorium on the patenting of biotechnological material relating to humans and animals. The moratorium would continue in effect after the three-year period until a Biomedical Ethics Board and a Biomedical Ethics Advisory Committee, both established by Senator Hatfield's proposed amendment, conducted studies, issued reports and until Congress acted upon such reports. The Administration strongly opposes enactment of this amendment.

The ability to protect the results of very costly research and development efforts in biotechnology has enabled this American sector of industry to remain a world leader. Patenting this technology has permitted our biotech firms to continue their progress in areas that are of vital importance to humankind in a variety of areas, and especially in the improvement of health care. Genetically engineered medicines are now available to treat a number of diseases, including some that were previously untreatable. Ongoing

research has the potential to result in products that could eradicate the suffering caused by diseases such as cancer, AIDS, Alzheimers and sickle cell anemia. All this activity is now possible largely because the huge investments needed for research and development are made with confidence in effective intellectual property protection.

Senator Hatfield's amendment, if enacted, would completely undercut these efforts and would serve to dismantle the American biotechnology industry. No company can afford to invest hundreds of millions of dollars to develop a product that could be copied by a competitor without penalty. As a result, Senator Hatfield's amendment would virtually hand over our leadership in biotechnology to other countries that are farsighted enough to protect the results of research and development efforts of their vital industries. Accordingly, America would not only take a back seat in the quest for improving the quality of life. It would also lose an industry that has an enormous potential to help U.S. economic growth over many decades to come.

In summary, the Administration believes that this amendment is ill-advised and potentially devastating to the U.S. biotechnology industry. Should this amendment reach the floor for consideration, we would urge its immediate rejection.

The Office of Management and Budget has advised us that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

HARRY F. MANBECK, Jr.,
Assistant Secretary and Commissioner of Patents and Trademarks.

Mr. ADAMS. Mr. President, had the amendment that was offered and withdrawn by my friend, the senior Senator from Oregon been brought to a vote, I would have opposed it, and I would have urged my colleagues to do likewise. Rather than going into a lengthy explanation of the grounds for that opposition, I will simply ask that a letter and fact sheet I received from Steven A. Duzan, chairman and chief executive officer of the Immunex Corp. from Seattle, WA, be included in the RECORD at this point.

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

IMMUNEX CORP.,
Seattle, WA, March 31, 1992.

Hon. BROCK ADAMS,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: We are strongly opposed to the Hatfield Amendment to the NIH reauthorization bill (H.R. 2507). Senator Hatfield is proposing legislation that would prohibit the U.S. Patent and Trademark Office from issuing patents on a wide range of genetic engineering inventions.

This legislation could cripple the development of biotechnology in the United States.

This amendment may be offered on the Senate floor as early as 2:30 p.m. EST this afternoon. There have never been any hearings on this topic. Nor has a bill on this topic ever been introduced.

I have included a Fact Sheet on the legislation for your review. Please don't hesitate to call me or Tom Ranken if we can assist you in this matter. We can be reached at 206-587-0430.

Very truly yours,

STEPHEN A. DUZAN,
Chairman and CEO.

HATFIELD AMENDMENT TO NIH REAUTHORIZATION (H.R. 2507)

The biotechnology industry strongly opposes the Hatfield amendment to the NIH reauthorization bill. If enacted, this proposal would bring to a sudden and dramatic halt to fifteen years of remarkable growth experienced by our industry.

The U.S.'s world leadership position in biotechnology, including net exports of $600 million, would evaporate if this amendment was made law. Other countries—including Japan and Europe—will continue to issue patents on inventions that would become unpatentable in the U.S. under the Hatfield amendment.

The Hatfield amendment has never been introduced as a bill and has never been the subject of committee or subcommittee hearings. The Senate should not pass such an amendment.

WHAT DOES THE AMENDMENT DO?

Senator Hatfield has announced his intention to offer an amendment to the NIH reauthorization bill that would, among other things, prohibit the U.S. Patent and Trademark Office from issuing patents on a wide range of genetic engineering inventions.

The prohibition would be initially for a three year period beginning on the date of enactment, but would be renewable for successive three year periods. Inventions that would become unpatentable include human tissues, fluids, cells, genes, genetic sequences, and animals—even when these materials have been genetically engineered.

HOW WOULD THE AMENDMENT AFFECT THE U.S. BIOTECHNOLOGY INDUSTRY?

Biotechnology is the application of engineering and technological principles to living organisms of their components to produce new inventions or processes. An important branch of biotechnology is genetic engineering, or recombinant DNA technology, which concerns the analysis and alteration of genes and proteins to make useful products. These sciences are of vital importance to U.S. and world progress in innumberable fields, but particularly in improving health care. In fact, the National Academy of Engineering characterizes genetic engineering as one of the ten outstanding engineering achievements in the past quarter century.[1]

Genetically engineered drugs and vaccines are now available to treat a number of diseases, including diabetes, dwarfism, hepatitis, heart attacks, anemia, leukemia, and organ transplant rejection. Medical products in development have the potential to eradicate hundreds of diseases, including such intractable diseases as cancer, arthritis, AIDS, Alzheimers, sickle cell, and cystic fibrosis.

These breakthrough drugs have been developed by using human genes and cells to manufacture pharmaceutical proteins that harness the body's own disease-fighting capabilities. For instance, using certain kinds of genes, biotechnologists can enhance the body's immune system, interfere with the replication of harmful bacteria and viruses, and replace proteins that healthy bodies manufacture but sick bodies do not.

The amendment would prohibit the issuance of patents on most of the genetically engineered materials that are the essence of the U.S. biotechnology industry. Virtually none of this research will reach commercialization without strong intellectual property protection. No company will invest $100-200 million to develop a drug if a competitor can pirate the technology without penalty.

If this amendment is enacted, much ongoing research will come to a halt and millions of patients who are without current treatment will be denied access to the breakthrough drugs that our industry is developing. The U.S. will shortly thereafter cease to lead the world in biotechnology.

This would be unfortunate, since biotechnology is an important new source of economic vitality for America. (In 1991, our industry's sales increased 38%.) American scientists invented genetic engineering and American investors have funded the research and development that is enabling our industry to translate cutting-edge science into economic growth.

The biotechnology industry is one of the few industries in which the U.S. leads the world. This is largely because of the tremendous investment made in R&D by biotechnology companies—an average of $81,000 per employee and $3.2 billion per year on R&D. As a result of this research, the industry files almost 10,000 U.S. patent applications each year.

Biotechnology is an industry that can contribute mightily to U.S. economic growth and improved quality of life. Two major reports released this year labelled biotechnology one of several "critical technologies" that will drive U.S. productivity, economic growth, and competitiveness over the next ten years and perhaps over the next century.[2]

Mr. GORE. Mr. President, I appreciate the willingness of the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY and the distinguished chairman of the Judiciary Committee, Senator BIDEN, to hold hearings on the issue of patenting human gene sequences. I will follow those hearings with great interest because I believe that the National Institutes of Health is rushing ahead with a reckless and dangerous policy—in fact, the actions of NIH are so damaging to international and domestic scientific efforts that I hesitate to call it a policy at all. It is a mistake.

Let me explain what NIH is doing, and believe me you do not have to be a geneticist or a microbiologist to understand what is going on. In fact, Dr. James Watson, who won a Nobel prize for discovering the structure of DNA, says that the work NIH is trying to patent could be done by—and I quote—"virtually any monkey."

For several years now, the human genome project has been striving to create a map that lists the entire sequence of nucleic acids that make up the human genome. We do not under-

[1] National Academy of Engineering, Engineering and the Advancement of Human Welfare: 10 Outstanding Achievements 1964-1989 (1989).

[2] Council on Competitiveness, *Gaining New Ground; Technology Priorities for America's Future* (1991); White House Office of Science and Technology Policy, *Report of the National Critical Technologies Panel* (1991).

stand what 95 percent of the genome does; we do know that 5 percent of the genome codes for, or produces, genes that make proteins that are valuable in understanding human health and disease. A gene is not a single nucleic acid, but a sequence of them.

What NIH is doing is cutting up the human DNA chain into small pieces or sequences that are easily identifiable as being part of one or more of the 100,000 or so human genes. NIH can produce about 50 to 150 of these small sequences a day. NIH is then filing patent applications for thousands of these sequences without regard to the damage these patent applications are doing to the need for open and free exchange of data in the human genome project, both here and internationally.

NIH's policy is flawed from start to finish. The material that NIH is trying to patent—these sequences of the human genetic code—are part of our human heritage. NIH's work has not enhanced them or changed them in any way. By trying to patent this heritage, NIH is violating the central tenet of the human genome project that the information regarding the human genome should be the property of all. It is one thing to patent products developed from proteins that genes produce, such as growth hormones or diagnostic tests for cystic fibrosis; it is another matter to try and patent the most basic level of information found in the human genome—information that we do not yet even understand.

NIH claims that it has to patent these sequences as a defensive maneuver because after it publishes the information it loses the right to patent it. NIH says if it does not patent the information, industry will not invest time and money in this research. NIH is wrong on both counts.

These patent applications by NIH are not a defensive maneuver; they smack of a first strike, a preemptive strike, that has predictably caused counterattacks by other governments and possibly by private researchers as well. How can NIH be so concerned about losing the right to patent this information when the universal reaction to the patent applications is that the material is not patentable in the first place because it meets none of the standard criteria for patentability?

To get a patent, one has to show that the invention is novel, nonobvious and useful. NIH's patent applications are none of these. There is nothing novel about the procedure to cut up the human DNA chain into these small sequences; it is standard and well-known. The use of small sequences as markers is obvious and common. And, most importantly, NIH has no idea what these sequences do, so they have no identified utility.

As for the idea that NIH must do this to encourage investment, there is greater evidence to the contrary—that NIH's actions will discourage investment and increase the cost of the human genome project. Normally, a patent license is important to a company seeking to do research on a particular invention. But the nature of these sequences makes it highly unlikely that patents will be useful incentives.

The sequences do not mark just one gene so that a company can get a license for the sequence and do research on the gene it locates. The sequences can overlap so that several sequences can identify the same gene. Academics will not be able to justify research in the genome area if they have to compete against others who have a license to potentially the same gene. Industry will be reluctant to invest in research in the genes identified by the sequences when only a very small percentage of the genes will mean anything and the ones that do mean anything will be the subject of disputes and lawsuits by other companies licensed to research other sequences that identify the same meaningful gene.

Already, NIH's patent applications have wounded the international effort to map the human genome. In response to NIH's patent applications, the United Kingdom's Medical Research Council recently announced it would begin seeking patents on its research. Without any open discussion or consultation in advance of its actions, NIH has provoked a patent race where none should exist. It has closed a door that scientists around the world have fought to keep open.

Interestingly, it is the Japanese who are keeping the door open and who are resisting patenting this information in the interest of universal access to genome data. In fact, Japan is opening to the world the information it is discovering in its multimillion-dollar effort to map the genome of rice. How ironic that Japan, not known for economic foolhardiness, is sharing valuable data on an important crop, while NIH is hoarding basic information on human beings before it even understands what the information means.

The NIH Department of Energy Subcommittee for Interagency Coordination of Human Genome Research recently reported that "the NIH claims for the patentability of random partial DNA sequences are potentially damaging to the very scientific efforts NIH is promoting." That subcommittee unanimously deplored NIH's decision to seek the patents. Prominent scientists such as David Botstein and Paul Berg have joined the criticism.

In response, Dr. Healy, the Director of NIH, has stated that NIH's actions are "not a statement that we believe patenting this material is the proper thing to do now or for the future." Unfortunately for the future of the human genome project and international cooperation in science, NIH's actions speak much louder than its words. The very act of filing these applications for material that is not, on its face, patentable and that is part of our human heritage is universally viewed as an attempt to corner the market on human genetic information.

NIH's patent applications on human gene sequences are not in the interest of NIH, the United States or the future of science. I strongly oppose these efforts. I join with those who call for NIH to open its patent application files and claims and urge the Commissioner of the Patent Office to rule on the issues these applications raise as soon as possible.

I look forward to the debate in the Senate committees and the Senate itself on the rationale for NIH's actions. I urge Dr. Healy and Dr. Sullivan to reconsider this policy and to place the interests of science and humanity above the interests of those who believe that we should lock up the treasures of the human genome.

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

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in support of the NIH reauthorization. I consider the National Institutes of Health one of the crown jewels in our Government. It is one of our flagship institutions. It accomplishes the important public policy of saving lives and saving jobs.

It is at the Bethesda campus and extramural research, where the kind of work is going on to find cures for diseases, and develop the new ideas that will lead to the new products that save both lives and jobs. I want to make sure that the capacity of this institution is not only maintained but made stronger, that its mission be amplified, and that the breadth of its research be expanded.

Mr. President, last November I went to the National Institutes of Health and participated in a town meeting with the NIH employees. I have the distinction of being the Senator from Maryland in which the National Institutes of Health is located. So I wanted to hear from the people themselves what they felt NIH needed to get ready for the 21st century.

I heard many good ideas about what we should be doing to get NIH prepared for the 21st century. That is why I am proud to have introduced Senate bill 2285 earlier this year which has been included with Senator KENNEDY'S legislation. It provides, I think, a framework to modernize NIH.

My legislation, which is based on the suggestions of my constituents, talks about how we can help NIH recruit and retain personnel from Nobel Prize winners to firefighters, on the campus; protect the important facilities; help NIH retool for cutting-edge research;

and streamline procedures to ensure that a dollar's worth of taxes means a pound's worth of cure.

Mr. President, these are procedures. These are processes. And people say "What is all that about, Senator Mikulski?"

Mr. President, it is in these tiniest details that can help us prepare NIH for the 21st century.

The issues around recruitment, retention, retooling, and improvement of procedures will help us get ready for the future.

There are those in the administration who do not want to pursue this. They want to maintain the status quo—the old way of doing things.

Mr. President, 1950 recruitment, 1960 procurement, and 1970 approaches will not work in the year 2000. I want us to follow in our civilian economy the kind of strategy that has made us such a superpower in the military arena. What is essential to our victory and our power as a superpower in the military? I will tell you.

The military of the United States of America is powerful because it followed the doctrine of flexible response and organizes itself on a risk-based strategy. That is what I want the NIH to be able to do: to follow the doctrine of flexible response; that is, when new diseases come before our attention, like AIDS, they should have the administrative flexibility to be able to deal with these important issues the best way possible.

When we talk about following a risk-based strategy, we need to have an NIH framework that meets the risks by which our people are facing death. It is in our own communities that women will be more likely to die of breast cancer than at the hands of an invader from a foreign country. It is because our children are more likely to die of genetic diseases that we want to make sure that the NIH can follow a risk-based strategy.

Right now, the status quo of the administrative procedures would handicap that. So that is why I hope the procedural and procurement and personnel requirements that I am recommending will enable us to quicken our response.

Mr. President, I also want to thank my fellow Senators for working with me on the women's health issues that we have been facing.

Just 2 years ago, I brought before my colleagues the fact that women were systematically excluded from research in the major health research areas of the U.S. Government. We talked about how that famous study where we found that an aspirin a day kept a heart attack away included only men. We also talked about the fact that the National Institutes of Aging had done a 20-year study and included only men, and then put out a pamphlet entitled "The Normal Processes of Aging."

When I raised that issue, we were told that we were research problems because of our hormones.

Well, Senator MIKULSKI just did not take that sitting down. Thanks to my colleagues in the U.S. Senate, we now have established an Office of Women's Health. And we now know that women will not be seen as research problems but will be included in the research agenda.

I want to thank my colleagues for doing that. I also want to thank Senator KENNEDY for his cooperation in increasing the breast and ovarian cancer research money. One out of nine women get breast cancer today. Only 1 out of 20 got it in 1960. We need to find a cure because it preserves lives, and it saves families.

Mr. President, I recently received a letter from a constituent whose wife died this January of breast cancer. This is what he said to me:

> If you have never lost your partner, who in my case was not only my wife and mother of a fine young man, but my very best friend, then you cannot know my pain, not my total emptiness.

He goes on to say,

> Senator Mikulski * * * I only ask that you do something for the wives, the daughters, and the mothers who are still with us. * * * Don't pay lipservice to the war on breast cancer.

Thanks to the work of the Senate committee which brings this bill here, we have increased research money for breast cancer so families like these will not be torn apart any more.

Other parts of the bill that supports better research on women's health is the Office of Women's Health Research that is now being headed up by Dr. Vivian Pinn, a distinguished scholar-physician who is on leave from Howard Medical School, who will have more research for gynecological cancers.

We will have a data base on women's health research.

We will study the aging processes in women.

We will look at women and AIDS.

Mr. President, we are going to establish a cancer registry that will help men and women everywhere, and begin to look at the issues of epidemiology that are being overlooked.

Mr. President, I think this National Institutes of Health legislation is very good legislation. It is very good legislation because it does exactly what the American people want us to do—save lives. In the process of saving lives and coming up with competitive research we lay the groundwork for new and improved methods of treatment and care.

That is what they want us to do. The American people truly believe, right now, that if you give the Federal Government a dollar, we will spend two, and not have anything to show for it. When we talk about what we are doing at that campus in Bethesda, MD, where we will find a cure for AIDS, we will find a cure for Alzheimer's, and we will attempt to deal with pediatric diabetes and other tragic diseases. Then, Mr. President, we will have spent the taxpayers' dollars wisely. We will be able to hold our heads up high, not only this year, but well into the 21st century.

Mr. President, I yield the floor.

WOMEN'S HEALTH INITIATIVE

Mr. JOHNSTON. Mr. President, I rise today to express my strong support for the women's health initiative provisions in the National Institutes of Health Reauthorization Act.

Women's health issues have been neglected far too long, and this legislation addresses the glaring inequities in funding, research, and public awareness. Only by identifying and recognizing the particular health needs of women can we begin to address real solutions for a comprehensive health care policy.

By giving the Office of Research on Women's Health the resources and authority to ensure that every Institute in NIH will deal with women's health issues, we are making a powerful statement. Research on women's health will no longer be relegated to second-class status, but will, instead, become a distinct and equal partner in all fields of medical inquiry.

Mr. President, such research has serious implications on our notions of medical care. For example, women over the age of 85 are now the fastest growing age group in the United States and the average lifespan of women is 7 years longer than men. In addition, women comprise over 75 percent of the population in our nursing homes.

The mandate included in this measure for the National Institute on Aging to conduct studies on the aging processes of women will aid us in our quest to understand the implications of our aging population. We must begin to understand the nature of aging in women if we hope to initiate meaningful policies and programs to improve the quality of life of our citizens.

I am especially pleased that this legislation will ensure the inclusion of women and minorities in clinical trial programs. To continue to arbitrarily exclude women from such research would only add to our misunderstanding of women's health and deny the validity of basic facts.

The fact that one out of nine women will contract breast cancer; the fact that women are much more likely than men to suffer from chronic illnesses and conditions like arthritis, hypertension, incontinence, and osteoporosis; the fact that during this decade the average lifespan of American women will surpass the age of 80—these facts are indisputable and must strengthen our resolve to develop a focused strategy for women's health.

We must remember that this legislation is not a solution. It is an important, albeit belated, beginning. This initiative reaffirms our commitment to develop and maintain quality health care for all Americans.

Mr. ADAMS. Mr. President, I rise in strong support of the title III women's health research provisions in this bill. They are terribly important.

The sad truth is that women's health care is not taken as seriously as men's.

Recent reports by the General Accounting Office and the American Medical Association have uncovered wide disparities in how women's and men's health care needs are treated by doctors and researchers.

The fact of the matter is that where women's health is concerned, women are treated as second-class citizens.

Less than 1 year ago, the GAO found that the National Institutes of Health [NIH]—which pays for most of this Nation's medical research—had failed to implement a policy that would encourage researchers who apply for grants to include women.

In fact, the NIH policy said that the inclusion of women should not be a consideration of the scientific merit of the grant application.

The AMA—in their own investigation—found that although women receive more examinations, laboratory tests, blood pressure checks, and drug prescriptions than men, they get fewer major diagnostic and therapeutic interventions—like dialysis, kidney transplantation, and cardiac catheterizations—even though they may be at equal or greater risk of serious illness.

In fact, the AMA is pressing its membership to take a closer look at how women are being treated and to do some soul searching to eliminate gender bias in medical practice.

But we have a long way to go. Women today are likely to receive inadequate treatment for such conditions as cardiovascular disease because diagnostic and treatment protocols are based on studies done in men.

The two most recent clinical trials in the area of heart disease included 15,000 and 22,000 men and no women. It will be years—if at all—before clinical trials of this magnitude will be done with women.

Apparently, NIH has thought it was OK to represent only half the people in this country. Well it's not.

Title III requires the inclusion of women in clinical trials—except of course where it is inappropriate.

The bill also requires that NIH devote resources and attention to diseases that specifically affect women, like breast and cervical cancers and osteoporosis.

Too little attention and resources have been devoted to these devastating diseases.

The incidence of breast cancer is rising at an alarming rate, especially for women over 65. Yet we don't know why.

Last year we set forth the breast cancer challenge to find a cure and understand the cause for breast cancer by the year 2000.

To reach this goal will take enormous resources and effort and a strong Federal commitment.

The authorization level in this bill for breast cancer will make certain that we can win the war against this disease.

A disease that strikes one in nine women in their lifetime. And this year alone will take the lives of more than 46,300 women.

Finally, I would like to say a word about a new authorization in this bill we have added for osteroporosis and other related bone diseases research.

The bill provides $40 million to fight what doctors call a silent epidemic that affects over 24 million Americans.

Osteoporosis is characterized by low bone mass and structural deterioration of bone tissue. It makes its victims likely to get get hip, spine, and wrist fractures.

This disease is preventable. But most women are unaware of their risk or what they can do to prevent it.

We need to do a better job getting the information about how to do that through diet, exercise, and a healthy life style.

We also have to do something about a cure. One-third to one-half of all postmenopausal women will be affected by this disease. We need new research dollars to guarantee that the basic research is done.

American women have been put at risk long enough. It is time to close the health gap that exists for women today.

Support women's research, vote for the NIH bill.

Mr. KENNEDY. Mr. President, I wanted to address the issue that our friend and colleague, the Senator from Oregon, addressed earlier today, and just make a very brief comment about his particular proposal. Currently, there is an ongoing process in the executive branch which will lead to a recommendation on the very issues that he is concerned about. The Genome Patent Working Group was formed by the Office of Science and Technology Policy at the White House in December 1991, to report at the end of 1992 on the scientific and ethical implications of patenting genome research.

As I understand it, it includes the top people from NIH, NSF, OSPT, and the Departments of Commerce, Agriculture, Energy, and State. The working group will hold a public hearing at the National Academy of Sciences in May to take testimony from interested parties on the issues, including the concerns which Senator HATFIELD has expressed, relating to the patenting of human tissues. There is also an NIH advisory committee formed to advise Bernadine Healy on the DNA sequences.

This committee should be ready to report in the next several months. I have indicated to the Senator that we will be glad to hold a hearing in the Labor Committee soon after those reports are available, and to even get a public discussion on these reports. I understand that Senator DECONCINI, who is the chairman of the Patent Subcommittee, and the Judiciary Committee, will do likewise.

If Senator HATFIELD believes that the Office of Technology Assessment is the appropriate agency to conduct such a study or review, we would be glad to work with him in the development of such a proposal.

We have basically, over a period of years, not done terribly well in the Congress, in looking at various agencies of government. This is a specialized one that Senator HATFIELD is speaking about, basically, on ethical issues. The Senator from Oregon may recall that we the Committee on Labor and Human Services held hearings a number of years ago on unethical practices. We heard about the "Ralph girls" and how they were required to be sterilized before they could be eligible to receive any kind of Federal assistance. This resulted from a failure to have ethical guidelines.

The Public Health Service supported a study on the natural history of syphilis, unfortunately the investigators failed to inform some of the individuals who were infected with the disease that they had the disease or that there was treatment available, in some cases for 20 to 25 years. Since there were no ethical guidelines in place, this research caused death, or disability to infected individuals who were denied treatment and a cure.

Another example of an unethical practice was the Bureau of Prisons using Depo-Provera in women's prisons in Tennessee with the consent of the prisoner. We held hearings on the Central Intelligence Agency experiment where some of their agents were given hallucinogenic drugs and antidotes in order to study the effects of hallucinogenic drugs and the effectiveness of the antidote. One of the agents felt that he had betrayed secrets and committed suicide. The agents receiving these hallucinogenic substances had no idea that they were being used as guinea pigs.

And you have a Government agency proceeding along those particular lines. The Bioethics Commission expired in 1990. Unfortunately, the Commission got involved in the abortion debate which caused division within the Commission. In addition, the Commission was set up only to develop general guidelines—no enforcement abilities whatsoever, just guidelines to be published in the Federal Register. All of their recommendations were actually acceded to by Republican and Democratic administrations. It was one of the important success stories, so that we could avoid any unethical practices in the future.

When we have the circumstances raised by the Senator from Oregon, I regret very much that we do not have

a continuing panel of distinguished ethicists, theologians and representatives from the diverse religious beliefs in our society to help guide us on these matters which are enormously complex and incredibly important.

So I thank the Senator from Oregon very much for raising this issue of enormous importance. I will assure the Senator from Oregon that we will respond in a way, which hopefully, will help charter an appropriate public policy course.

Mr. President, I see my colleague from Illinois.

AMENDMENT NO. 1755 TO AMENDMENT NO. 1754

Mr. SIMON. Mr. President, I will speak on the secondary amendment that I have offered that is pending. First, I will describe what our bill does in regard to the sex survey research, which is a sensitive area. It would simply allow the Secretary to fund human sexual behavior research that has first been approved and reviewed through the existing scientific peer review process.

This means the project has been reviewed by applicable local ethics review panels, and that it has been reviewed by scientific panels. And then it has been approved by the Director of the Institute that is involved. Then, the Secretary is to fund the surveys on sexual behavior, or the Secretary can appoint an ethics advisory board to determine if there are ethical grounds for withholding funding.

The provision—I would like to underscore this—does not require or mandate that such studies be done.

In addition to these qualifications, what my amendment does is add another qualification. And that is that the Secretary has to determine that this survey—there are two surveys involved—will assist, first, in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or second, in improving reproductive health or other conditions of health.

And on the survey that is the teen sex survey, it is voluntary on the part of the teens, and it requires parental consent. The adult survey was initially developed by the National Institute of Child Health and Development, being concerned about what was happening in the whole AIDS problem.

At one point, it was approved by Secretary Sullivan and Assistant Secretary of Health, Mason. On the teen survey, let me quote from Dr. Bernadine Healy, the appointee of President Bush, who is now the director of NIH.

She said the following about the teen sex survey:

> It will be a wonderful survey. I knew it would be controversial, and I reviewed it personally. I read the whole thing myself, and it is an excellent study.

The amendments that we have offered, Senator KENNEDY's primary amendment and my secondary amendment, were approved by the House of Representatives 283 to 137. My colleague, who is the Presiding Officer now, Senator BREAUX, will recall that Congressman ROY ROWLAND, from Georgia, who is a physician, and with whom I had the opportunity of serving in the House and for whom I have great respect, and Congressman MCDERMOTT, who is also a physician—and I do not believe I served in the House with Congressman MCDERMOTT—but these two physicians led the fight on this.

And my colleague who is the Presiding Officer will tell you Congressman ROWLAND has his feet on the ground. He is a very conservative Democrat. And Congressman ROWLAND said this is essential if we are going to protect the health of people in this country, and I think we ought to be listening to him.

It is interesting who has endorsed this. The American Medical Association and the various public health associations, psychological associations, and so forth, and let me add one other. I cannot remember—maybe it is just my faulty memory—I cannot remember the American Red Cross ever getting involved and endorsing amendments, but the American Red Cross says this is important because of the health of our population.

At one point the administration strongly supported the surveys, but under pressure, frankly, from those who misunderstood the Secretary of HHS either voluntarily or was forced to overrule them and backed off on this. What we want to do is open the door. This does not mandate it. But it allows it and it encourages us to move forward.

We have huge problems. We have not had a teen survey, sex survey, or adult survey since the late forties and early fifties. Why do we have some of the problems that we have? Well, they vary so much—births to unmarried women—and, incidentally, we have the highest teenage pregnancy rate in any industrialized country in the world—births to unmarried women. Whites in Hartford, CT, 50 percent of the births are to unmarried women, and in Detroit it is 32 percent. Why this differential? In New Mexico, on the white population, it is 27 percent, and in Alabama it is 10 percent. Among blacks, in Wisconsin it is 76 percent, in Illinois, 75 percent, in Hawaii 15 percent.

Why the huge differences no matter which ethnic group you pick? We ought to know. Ignorance does not protect us, I say to my friends. That is the most fundamental thing that we have to recognize. We have a choice of ignorance or knowledge in this field. Let us not choose the route of ignorance.

For example, among teenagers, the rate of AIDS has gone up 20 percent in the last 2 years. That ought to be of concern to all of us. Two million Americans now suffer from gonorrhea. There is a whole series. Syphilis has gone up 85 percent since 1985; chlamydia, 4 million American women are suffering from this. AIDS is going to cost—these estimates vary, and I do not know who is right on these estimates—AIDS is going to cost this Nation, in terms of government and private expenditure, somewhere between $4 and $13 billion this year, totally aside from the humanitarian problem that that causes. Over 130,000 Americans have died of AIDS. What we want to do is let us find out how we can prevent some of this needless tragedy.

It is interesting that USA Today has an editorial, which I shall read:

> A handful of politically potent prigs are treating a major public health problem like a dirty joke.
>
> Secretary of Health and Human Services Louis Sullivan gave in to ideologies who objected to questions about sexual practices in a five-year survey of adolescent sexual behavior and killed funding for this worthwhile effort.
>
> He may have killed more than a study. Ignorance about the risks our young people are taking can cost lives.
>
> The goal of this study was to discover not just what teens are doing, but why. Why are they putting themselves in danger of AIDS, sexually transmitted diseases and unwanted pregnancy at younger ages and in greater numbers? What influences do family values have on their decisions? What part do school, peers and the community play?
>
> If this misplaced prudery prevails, we'll never know. Many, like the writer across the page, think that's just fine. They're content with the current state of knowledge and don't want to spend government money to learn more.
>
> This is a dangerous advocacy of ignorance.
>
> Many questions that raised objections had been dropped from an early draft. Three-quarters of the questions were not about sexual practices. Each of the 24,000 teens answering the survey would do so with parental consent. Parents would answer separate questionnaires.
>
> These days, a teen who is careless with sex risks far worse consequences than parental disapproval.
>
> AIDS cases among teen-agers in the United States have increased about 40 percent in two years, which means that there are now thousands infected with the deadly virus. Other data tells us that awful number is bound to grow:
>
> Half of girls have had sex by age 17; half of boys by 16.
>
> Only one-third of boys always use condoms.
>
> Nearly 80 percent of boys and 50 percent of girls age 18–19 switch partners within 12 months.
>
> That's a recipe for disaster for our young people.
>
> AIDS is just one of the diseases that can wreck their lives; they're also in danger of infections that can cause sterility and pregnancy that can put them on welfare. Fifty-nine percent of women who were receiving welfare in 1988 were age 18 or younger when they first gave birth.
>
> If these grim facts are going to change, we have to learn more about teen behavior. What encourages teens to take such risks? What would persuade them to avoid those risks?

Secretary Sullivan should heed the House vote late Thursday affirming such surveys. What better use for public money than buying a tool to save young lives?

What we choose not to know can ruin their lives—or kill them.

We have spent, I do not know how much time, Mr. President, in this body and in the other body on the whole question of abortion. One of the major causes of abortion is teenage pregnancy. We have about a million teenage pregnancies each year, 400,000 of which end up in abortions. If through this survey, we can reduce the numbers of teenage pregnancies, we will, in fact, then reduce the number of abortions. Those who are interested in reducing the numbers of abortions should be supporting the amendment which Senator KENNEDY and I have offered.

If this survey goes ahead, will it add one more teenage pregnancy to this Nation? I cannot believe it. If this survey goes ahead, can we get knowledge that can prevent teenage pregnancies? I cannot stand here and guarantee it, but there is at least a strong possibility that we can.

Let us not move under a cloak of darkness. Let us find out what is going on.

Ignorance is going to cost lives. Education can save lives, and if particularly we know some of the ties and some of the reasons for some of the problems we face, everyone is going to be ahead.

For those who say you cannot do anything in the way of education and prevention, I say to my friends, smoking ordinary cigarettes is a much different thing today than it was not too many years ago. I was just thinking this morning I do not think we have 10 Members of the United States who smoke cigarettes anymore. I am sure that 20 years ago or 30 years ago, probably at least half of the Members of the United States did. Education does work.

How can this survey find out anything? Well, we can maybe find out how teenage pregnancy may be tied in with alcohol, with peer pressure, with other problems, with a whole question of educational attainment.

I think, by all means, we ought to move ahead on this, Mr. President, and I hope we do the rational thing, the compassionate thing, and the thing that is going to save lives, and that is to say that we are going to make a decision that we are not going to act out of ignorance. We are going to act because we have accumulated the kind of knowledge that we ought to have.

Mr. President, if no one else seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SIMON. Mr. President, I request the yeas and nays on the amendment that we have offered.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second, the Chair observes, at the present time.

Mr. KENNEDY. Yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMON. Mr. President, as far as I am concerned, we can proceed to the vote. The managers of the bill may have more knowledge that there are others who wish to speak on it. If there are none, we can go ahead with the vote.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Chair recognizes the Senator from Indiana [Mr. COATS].

Mr. COATS. Mr. President, I regret that I was not able to be on the floor a couple days ago during the debate on this issue and specifically the amendment offered by the Senator from Utah. I had been informed that debate on that particular amendment would take place on a subsequent day and was necessarily off the Hill at the time the amendment was brought up. I was not able to get back in time for debate on the amendment, although I was back in time to vote on it.

I, therefore, would like to take a little bit of time this afternoon during this interim period here to discuss what I would have discussed had I been here during the actual debate.

Mr. President, for many Members of this body, this issue of fetal tissue research is a wrenching one. It is one that I hope causes all of us to step back and assess on a scientific basis, an objective basis, not strictly on an ideological or philosophical basis, but look carefully at the evidence and objectively at the evidence and ask some very fundamental questions.

Many Members of the U.S. Senate either have parents or children, spouses or relatives, or friends, associates or colleagues, that have unfortunately been struck with or suffered a neurological disease in which fetal tissue transplantation offers some hope of, if not a cure, at least prolonging of life, improving the quality of life for a longer period of time for those individuals. And so it is not a subject that we ought to just lightly dismiss.

This type of research does potentially offer promise to millions of suffering Americans, and many of us have personal experiences with friends or family that could have have benefited, possibly have benefited, from advances in transplantation of fetal tissue.

Having said that, I think it is important that we very carefully consider the role of the Federal Government in all of this, the use of Federal tax dollars for research in this area, and ask ourselves some very important ethical and moral questions that will, I believe, grow in urgency each year as we advance the scientific study of fetal tissue transplantation and fetal tissue research. We are presented with a wrenching dilemma and it is our job to find a path that serves both public health and moral principles, a path that offers hope but shows ethical insights, because if we fail on either side, we fail in everything.

Scientific research, Mr. President, does not occur in a moral vacuum. It has to be guided by something more than what is just possible.

I rise today to address my colleagues and ask them to thoughtfully and carefully consider questions, not because I am certain about the answers to these questions, but because these questions are disturbing questions to which we must seek answers. And as we advance in this area, as we perhaps obtain scientific advances and discoveries that will provide some measure of relief in the area of neurological diseases and its consequences, more of these questions are going to arise and we are going to have to answer them at some point. So I think we ought to start thinking about it now.

Question No. 1: Will the use of tissue from elective abortion create an irreversible economic and institutional bond between abortion centers and the abortion procedures and biomedical science?

Just think a moment. If medical research becomes dependent on widespread abortion, a vested interest would be created clearly in a substantial, uninterrupted flow of fetal remains.

Stephen Post, chairman of the American Academy of Religion's Medical Ethics Group and an associate editor of the Encyclopedia of Bioethics, writes:

If this area of high medical technology develops through the use of tissues from elective abortions, there might be no turning back. Abortion would be firmly tied to medicine, deeply ensconced in "scientific progress." * * * biomedical science will depend on a steady supply of elective abortuses.

Second, what future will we find if tissue transplant which is dependent on elective abortion is successful?

If all the victims of diabetes, Parkinson's, Alzheimer's disease and neurological trauma were to be treated with human fetal tissue, between 4 and 20 million fetuses would have to be procured to supply that tissue.

Now clearly we are presented with a dilemma here. The very success of the research will create an enormous demand for the tissue and the demand for the tissue will require a supply to meet that demand. And it is estimated that that supply will be many times the current amount of fetal tissue that will be available, even if we chose to use all tissue from all aborted fetuses. And of course we know that in many instances the tissue is not usable, and so we are looking at a potentially extraordinary number of abortions necessary to provide the tissue necessary to provide the treatment.

There are up to 3 million Americans with Alzheimer's. There are at least 1 million with Parkinson's. There are 11 million Americans who have diabetes. In fact, it is estimated that 20 percent of the U.S. population suffers with some neurological problem—from epilepsy to Huntington's disease. And yet in experiments taking place in Sweden, using fetal tissues from four fetuses is needed to treat each patient. We are asking those millions of patients with neurological diseases and assuming that the research goes forward and shows it is successful, we are talking about, many, many, many millions of abortions necessary to procure the necessary tissue for treatment.

This is a prospective demand of massive size. But the supply of tissue from abortion is limited. In the United States, 1.8 million fetuses are aborted every year, yielding approximately 90,000 usable fetal parts.

So it seems to me, given this question alone, we need to direct our attention toward alternatives to finding ways to regenerate fetal tissue, to look at cell cultures, use of animal tissue, and other alternative research if the need is ever going to be satisfied.

A third question I think we need to ask is: By what right is this tissue obtained. Certainly, the remains of a fetus in an elective abortion are not donated in any traditional sense of the word. The fetus can give no consent. It is, instead, provided by the very people who ended the life of the fetus. Can the person who ended a life be morally permitted to determine the use of the parts of that life?

No one, it seems to me, has a right to the body organs of another human being. It is a generous gift of those who have made a choice—or perhaps would have made that choice if asked.

Fourth, is it really possible to neatly separate the practice of abortion from its use in biomedical research? Are researchers merely using the results of abortion, or are they dictating its practice? There are real concerns about how fetal tissue currently is being procured. Some types of abortions, like suction abortions, tear the fetus apart, making the brain recoverable in only 8 percent of the cases, according to the Royal Marsden Hospital Fetal Tissue Bank.

A report issued by the University of Minnesota Center for Bioethics has stated that in Sweden:

> Doctors have said they obtained brain tissue with a forceps before the fetus was suctioned out of the mother. That raises the question of whether the fetus was killed by the harvesting of brain tissue or by the abortion.

Janice G. Raymond, professor of women's studies and medical ethics a the University of Massachusetts has testified that doctors are already altering the methods of abortion in order to get the issue they desire.

"Doctors who are eager to get good tissue samples," she says, "must put women at additional risk of complication by altering the methods for performing abortions and by extending the time it takes to perform a conventional abortion procedure."

Dorle Vawter, of the Center for Bioethics at the University of Minnesota has reaffirmed this observation, noting that some clinics currently alter abortion methods for tissue harvesting—slowing the abortion procedure, reducing the pressure of the suction machine, and increasing the size of dilation instruments, all practices which place women at additional risk.

Then a question that I think has been discussed but needs to be discussed in great detail on this floor because it certainly is at the heart of many of the decisions that are made relative to how we proceed on this difficult issue: Are we encouraging abortion by covering it with a veneer of compassion?

Dr. Kathleen Nolan, formerly of the Hastings Center, writes:

> Lifesaving cures resulting from the use of cadaveric material might make abortion, and fetal death, seem less tragic. Enhancing abortion's image could thus be expected to undermine efforts to make it as little needed and little done procedure as possible.

I think we have to ask the question: Is there not an incentive for the ambivalent in the promise of helping the needy victims of disease? Even if the formal consent for use of fetal tissue comes after a decision to abort—how is it possible to divorce a general knowledge of these facts from the decision itself?

Finally, are the so-called safeguards that have been proposed really adequate?

On paper, they look significant. However, these safeguards apply only to federally funded programs—not the more than 4,000 private abortion clinics that would no doubt be the source of the majority of this tissue. Not a single proposed safeguard touches them in any way.

These are my questions, and my fears. As Stephen Post puts it:

> Ultimately, it is the specter of a society whose medical institutions are inextricably bound up with elective abortions and whose people come to believe that for their own health they have every right to feed off the unborn, that gives pause.

Arthur Caplan of the University of Minnesota expresses these concerns in another way:

> This is the ultimate issue of generational justice. You're not just asking for the pocketbooks of the young—you are asking for body parts.

As I said when I started my remarks, this is a wrenching decision because we do know that fetal tissue transplantation offers hope for many millions of Americans who are now suffering a hopeless disease. And it is a potential advancement of medical science that is at stake here.

So the question we must ask ourselves in addition to answering these moral questions, is, is there a way in which we can continue the research? Is there a way in which we can continue the medical science advances, without putting ourselves in the moral dilemma of encouraging or expanding elective abortions in order to obtain the tissue?

It is here where Senator HATCH's amendment is critical. Because Senator HATCH, who has also wrestled with this question has said, yes, I think we should go forward with the research. But I think we should go forward with the research in a way that it does not induce elective abortions. Because we do take pause at the questions and ethical and moral dilemmas that are presented to us, it should go forth in a way in which we can at least minimize if not avoid those questions.

Senator HATCH's amendment, which unfortunately this Senate rejected, established a registry, a nonprofit registry, and a tissue bank using tissues obtained from spontaneous abortions and ectopic pregnancies. He also required a study to be completed within 6 months to look at the quality and the availability of tissue available from those sources. He authorized the Secretary to develop human fetal cell lines and study alternative methods of preserving viable fetal human cells and tissues.

It seems to me this is the logical way to go in terms of dealing with this issue, at least until we can get a better grasp of the moral implications and the ethical questions that all of us, I think, need to confront when addressing this issue.

I was distressed to learn, as I spoke with many Members and listened to many Members talk about this particular issue, the issue before us relative to Senator HATCH's amendment—and really relative to the bill itself in terms of how it dealt with this issue—was cast in a way that many thought that the vote was on whether or not we would go forward with any fetal tissue research. Members need to understand that research is going to continue whether or not the current moratorium imposed by the Secretary of Health and Human Services is lifted.

I want to quote a statement made by Dr. James Mason, to the Committee on

Labor and Human Resources on November 21, 1991, when he testified before us by saying:

The current moratorium is described by a "razor sharp" definition that delimits its boundaries. It precludes Federal funding only of research that transplants human fetal tissue from induced abortions into human recipients. It does not prohibit the funding of such research in the private sector—

Universities, clinics that are utilizing human fetal tissue, however obtained, are not affected by this moratorium; that research will continue—

nor does it prohibit Federal support of therapeutic transplantation research that uses fetal tissue from spontaneous abortions or ectopic pregnancies.

This is not an issue of whether or not fetal tissue research will go forward. This is an issue of what fetal tissue will be used to conduct that research. Will we limit the use to spontaneous and ectopic abortions? Or will we expand it to utilize the tissue from induced abortions.

Dr. Mason says:

Finally, the moratorium does not prohibit research involving the implant of human fetal tissue in animal models. As you can see, this is a very narrowly defined ban.

So, Members should be under no illusion that their vote 2 days ago was a vote to continue fetal tissue research to provide potential relief to millions of Americans suffering from neurological diseases or to cancel that research. Members should not be under the illusion that the issue was the inhumane prohibition of scientific research that could save the lives of fellow human beings. That was not at issue. What was at issue is what I had raised before, and that is what tissue will we use, and where will we get that tissue, and what are the moral, ethical consequences of continuing down the road that we will start down once this moratorium is raised?

Dr. Sullivan, in his letter to Senator KENNEDY, the chairman of the Labor and Human Resources Committee, on February 4 said that the bill before us "is unacceptable because it would permit federally funded transplantation research endeavors to use fetal tissue from induced abortions. Many thoughtful physicians, researchers, and women and men from all walks of life strongly believe that this could have the potential of fostering an increased incidence of abortion"

Those of us who recorded our support for Senator HATCH's amendment are among those who believe that we need to look at the long-term consequences of the decision that is before us, and the moral ethical challenges that that decision presents and that we need to get answers to those questions before we start down this road from which we might not be able to turn back.

For my friends who believe or who have not looked at the evidence and who think this is a question of giving NIH the authority to proceed with an important potential scientific breakthrough and that this administration has cruelly prevented that from happening, I hold up thousands of pages of human fetal tissue research grants, programs undertaken by the National Institutes of Health with taxpayers dollars. This is the volume of human fetal tissue research now going on with tax dollars.

So it is not a matter of an inhumane, cruel, cold administration who does not have some sensitivity to the issue at hand and who is not interested in going forward with fetal tissue research. This is millions of dollars being spent on that very thing.

And so, Mr. President, I hope that as we think through this issue and as we proceed in the days and years ahead, we will consider these important questions. Research currently supported by NIH with taxpayer funds may eliminate the scientific need for fetal tissue research from elected abortions altogether. That is what Senator HATCH is hoping to accomplish. The research which involves creating cell lines for spontaneous abortions and abortions performed as a result of ectopic pregnancy is very promising and it has the possibility of yielding significant results for many hundreds of diseases and disorders. This type of research is of particular importance since virtually all research scientists admit that procuring sufficient fetal tissue will be a problem in the future.

This is the reason Senator HATCH's amendment made so much sense, and that is why its rejection was so disturbing.

Choices made in the world of medical research unavoidably involve a moral vision, and while promises of new therapies are important, they cannot be separated from serious and complex ethical reflection. Can science truly be separated from the practice of abortion, as supporters suggest? Will our success raise even more disturbing ethical dilemmas? I believe promising scientific creative alternatives exist right now and should be vigorously pursued. Using Federal funds for fetal tissue from elective abortions is a risk we do not have to take.

Mr. President, I ask unanimous consent that a letter from many doctors and professors be printed at this point.

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

MARCH 24, 1992.

DEAR MEMBER OF CONGRESS: We are writing in support of the current moratorium on federally funded human transplants using tissue from induced abortions. In our opinion the effort to overturn this moratorium through H.R. 2507, the National Institutes of Health reauthorization bill, is ill-advised for several reasons:

(1) The Administration's concern that such federally subsidized programs could become an added inducement to abortion has not been rebutted. In one recent study, a significant number of college students showed a willingness to induce abortion for the express purpose of providing fetal tissue (Lancet 335: 1594 [1990]). Clearly, some women could be swayed in their decision to abort by the perceived medical value of aborted fetal tissue.

(2) The therapeutic value of tissue from induced abortions has been greatly exaggerated by some involved in the political debate. Some experiments hailed as examples of therapeutic success actually used tissue from ectopic pregnancies (the Walden case in Texas) or from spontaneous abortions (Dr. Madrazo's research in Mexico)—and thus would be eligible for federal funding even under the current moratorium. In one much-reported experiment, Swedish researchers obtained fetal brain tissue for treatment of Parkinson's disease by aspirating the brain out of the fetal skull before terminating the pregnancy; yet despite this unrestricted zeal for "fresh" brain tissue, the researchers admitted that "no major graft-induced improvements of therapeutic value to the patients have been observed up to 6 months postoperatively" and concluded that this is "an experimental approach and not a therapeutic alternative" for Parkinson's (Arch. Neurol. 46: 627 and 630 [June 1989]).

(3) Alternative sources of tissue as well as alternative therapeutic approaches are available for many of the ailments in question, and have not been fully explored. Diverting federal funds to research that depends on the continued availability of tissue from induced abortions will detract from these alternative approaches, and make federal research on such ailments dependent on the continued legality of abortion. Once such a policy decision is made, federal or state changes in the legal status of abortion will correspondingly jeopardize the therapeutic practices that depend on this status. No such problems would be created by alternative approaches, such as the development of a tissue bank using tissue from ectopic pregnancies or spontaneous abortions.

(4) Current criteria for determining the death of the fetal donor are uncertain and inadequate. While total and irreversible cessation of all brain functions has become a standard criterion for determining death in adult donors, it is not a reliable standard for very young children—and in any event, fetal brain tissue must still be alive and "fresh" to be usable for transplants. Moreover, in the case of fetal transplants the physician determining the donor's death (i.e., the abortionist) has a direct role in ending the donor's life and a vested interest in obtaining tissue for transplantation. This is contrary to standard medical practice for all other cadaveric organ donations.

For these and other reasons, we believe reversing the current moratorium is unnecessary and unwise. We therefore ask you not to approve H.R. 2507 in its present form.

Sincerely,

Keith A. Crutcher, Ph.D., Department of Neurosurgery, College of Medicine, University of Cincinnati Medical Center, Cincinnati, OH.

Edmund D. Pellegrino, M.D., M.A.C.P., Professor of Medicine and Medical Ethics, Director, Center for the Advanced Study of Ethics, Director, Center for Clinical Bioethics, Georgetown University, Washington, DC.

Robert E. Harbaugh, M.D., Associate Professor of Surgery, Director, Cerebrovascular Surgery, Section of Neurosurgery, Dartmouth-Hitchcock Medical Center, Lebanon, NH.

Robert J. White, M.D., Ph.D., Professor of Surgery, Case Western Reserve University, Director of Neurosurgery and the Brain Research Laboratory, Metro Health Medical Center, Cleveland, OH 44109.

William Burke, M.D., Ph.D., Associate Professor in Neurology, Geriatric Medicine and Anatomy, Saint Louis University Medical Center, St. Louis, MO.

Stephen J. Ursala, M.D., Ph.D., Assistant Professor of Medicine, Section of Endocrinology, School of Medicine, East Carolina University, Greenville, NC.

James A. Moriarity, M.D., Assistant Professor, Department of Neurology, University of Minnesota School of Medicine, Minneapolis, MN.

Joseph A. Bellanti, M.D., Director, International Center for Interdisciplinary, Studies of Immunology, Georgetown University School of Medicine, Washington, DC.

Maria Mechejda, M.D., Senior Staff Associate, International Center for Interdisciplinary, Studies of Immunology, Research Associate Professor, Georgetown University School of Medicine, Research Associate Professor, New York University School of Medicine.

Linda M. Gourash, M.D., Clinical Assistant Professor of Pediatrics, Clinical Assistant Professor of Psychiatry, University of Pittsburgh School of Medicine, Medical Director, Western Pennsylvania School for Blind Children, Pittsburgh, PA.

Thaddeus P. Dryja, M.D., Associate Professor of Ophthalmology, Harvard Medical School, Massachusetts Eye and Ear Infirmary, Boston, MA.

Paul Monfils, Research Laboratory Coordinator, Central Research Laboratories, Rhode Island Hospital, Providence, RI.

Barbara A. Monfils, Research Assistant, Pathology, Rhode Island Hospital, Providence, RI.

Jeanne F. Brown, Senior Research Assistant, Medical Oncology, Rhode Island Hospital, Providence, RI.

Joseph P. Broderick, M.D., Assistant Professor of Neurology, Department of Neurology, University of Cincinnati Medical Center, Cincinnati, OH.

John Collins Harvey, M.D., Ph.D., Professor of Medicine Emeritus, Georgetown University School of Medicine, Senior Research Scholar, Kennedy Institute of Ethics, Washington, DC.

Matthew J. Bulfin, M.D., A.C.O.G., Obstetrician/gynecologist, Holy Cross Hospital, Fort Lauderdale, FL.

Bernard Nathanson, M.D., F.A.C.O.G., Clinical Associate Professor of Obstetrics and Gynecology, New York Medical College.

Douglas C. Heimburger, M.D., M.S., F.A.C.P., Associate Professor and Director, Division of Clinical Nutrition, Departments of Nutrition Sciences and Medicine, University of Alabama at Birmingham, Birmingham, AL.

Bogomir M. Kuhar, Pharm. D., F.A.C.P., College of Pharmacy, Idaho State University, Ingomar, PA.

Harry D. Carrozza, M.D., F.A.C.S., President, Philadelphia Catholic Physicians Guild, Ambler, PA.

Steve Calvin, M.D., Specialist in Maternal-Fetal Medicine, The Perinatal Center, Minneapolis, MN.

D. Alan Shewmon, M.D., Associate Clinical Professor of Pediatrics and Neurology, UCLA Medical Center, Los Angeles, CA.

Karl P. Adlar, M.D., Dean and Vice President for Medical Affairs, Professor of Medicine, New York Medical College.

Elaine M. Schalk, Ph.D., Department of Chemistry, The American University, Washington, DC.

Jorge Garcia, Ph.D., Senior Research Scholar, Kennedy Institute of Ethics, Washington, DC.

Stanton Harn, Ph.D., Associate Professor of Anatomy, University of Nebraska, Lincoln, NE.

Walt F. Weaver, M.D., Associate Clinical Professor of Medicine, Cardiologist, University of Nebraska, Lincoln, NE.

Bernard J. Ficarra, M.D., President, Catholic Academy of Sciences, Washington, DC.

Robert Clancy, M.D., Associate Professor of Neurology and Pediatrics, University of Pennsylvania School of Medicine, Philadelphia, PA.

James Boyce, M.D., Professor of Anesthesiology, Director of Medical Student Services, University of Alabama School of Medicine, Birmingham, AL.

Mary Ann Dettmann, M.S., Associate Professor, Department of Physical Therapy, Marquette University, Milwaukee, WI.

Richard J. Ellis, Ph.D., Department of Biology, Bucknell University, Lewisburg, PA.

Richard J. Fehring, D.N.S., R.N., Associate Professor and Research Facilitator, Marquette University, College of Nursing, Milwaukee, WI.

William J. Keppler, Dean, College of Health, Professor, Human Genetics, Florida International University.

Gloria E. Payne, Ph.D., Associate Professor of Biology, Georgian Court College, Lakewood, NJ.

Gervasia M. Schreckenberg, Ph.D., Professor of Neurobiology, Georgian Court College, Lakewood, NJ.

Paul R. Beining, Professor of Biology, University of Scranton, Scranton, PA, Guest Researcher with FDA on NIH campus, Washington, DC, Scranton, PA.

William J. Koopman, M.D., Professor of Medicine, Division of Clinical Immunology and Rheumatology, University of Alabama, Birmingham, AL.

Kimberly A. Sherrill, M.D., M.P.H., Department Gray School of Medicine, Medical Center Blvd., Winston-Salem, NC.

Richard Kiovsky, M.D., Department of Family Medicine, Indiana University, Indianapolis, IN.

Eugene F. Diamond, M.D., Professor of Pediatrics, Loyola University School of Medicine, Chicago, IL.

William V. Dolan, M.D., F.A.C.S., Program Director, ESPERANCA, Inc., Phoenix, AZ.

John O. Fleming, M.D., Associate Professor of Neurology, Medical Microbiology and Immunology, University of Wisconsin School of Medicine, Madison, WI.

Michael Muhonen, M.D., Department of Neurosurgery, University of Iowa Hospitals and Clinics, Iowa City, IA.

Robert E. Flynn, Professor of Medicine and Neurology, Tufts University School of Medicine, Medford, MA.

Mr. COATS. Mr. President, I urge my colleagues to think this through carefully, think about this policy currently endorsed and supported by the administration which allows fetal tissue research to proceed but has provided meaningful safeguards. We cannot and need not allow our compassion to be made an enemy of our humanity.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to commend my friend from Indiana for the interest and thought he has invested in this issue. He made a number of these points effectively during the course of the markup, and he makes them again this afternoon.

For those who are following the debate, if they were to review the various remarks of the Senator from Utah, myself, and others, they would gain an understanding of the differences between various sources of fetal tissue and the relevance to conducting fetal tissue transplantation research. The fact is that even with all of the papers to which the Senator from Indiana has referred, there is only $10 million a year spent on fetal cell research. Yet, it was on the basis of fetal cell research that we discovered the vaccine for polio. We are talking about similar potential in research on Alzheimer's disease, spinal cord injury, multiple sclerosis, and a range of other diseases. Only $10 million and none can be spent on this promising research.

The Senator from Indiana said that all the ban simply forbids is NIH from participating in this research and that it can be conducted by the private sector. Yet, 99 Nobel laureates either do their research at NIH or have NIH grants and under the ban, not one of them is able to do this kind of research. The NIH is the pride of the Nation in terms of biomedical research. It's total budget is $8.9 billion a year and yet, of the $10 million a year being spent on fetal cell research, none may be used to support human fetal tissue transplantation research. This area of research has been identified as having enormous potential to save lives.

I think it is important to point out that when we are shown large sheaves of paper being waved around on the floor, we automatically think, that oh, my goodness, all this research is being done.

The fact is that it is not being done, and if this moratorium had applied in other areas of scientific inquiry, we would have excluded those 99 Nobel laureates. We have tried to find one American Nobel laureate who at some time did not receive NIH funding either at NIH or at a university. Thankfully, we have yet to find one, but if we were to follow the logic of the Senator from Indiana, we could find one in the future. The Senator knows full well that the amount of this research that is being done in the private sector is infinitesimal. This is a golden opportunity for progress, and that is what this debate is really all about—research freedom.

Mr. COATS. Mr. President, I wonder if I could ask the Senator for 2 minutes to respond to his statement.

Mr. KENNEDY. Fine.

Mr. COATS. Mr. President, just in response to the Senator from Massachusetts, I would point out that Senator HATCH's amendment did authorize an increase from $10 to $25 million for the

research that the Senator was alluding too. And in addition to that, the Congress, this administration, the American taxpayers are funding alternative research in these very areas we are talking about to the tune of $55 million a year in Parkinson's alternative research, a whole number of areas, $259 million a year for alternative research for diabetes and $186 million a year for alternative research in Alzheimer's, not insignificant funds.

The question remains, no matter how much money we might choose to put into this research, the moral and ethical questions remain before us. I think they need to be addressed, and I think every thoughtful Member of this body will want to address those moral ethical questions along with the amounts of money currently being funded for this type of research.

FETAL TISSUE TRANSPLANTATION

Mr. ADAMS. Mr. President, we heard earlier this afternoon a presentation by Senator COATS on fetal tissue transplantation research that I want to reply only by putting in the RECORD a letter from the University of Minnesota. I received this letter this morning from the research scholars who wrote the impressive study on the use of human fetal tissue. The letter objects to a memo being circulated by the American Life League that uses their study as a source. The University of Minnesota researchers support lifting the ban on fetal tissue transplant, and they enthusiastically support the bill.

Mr. President, a great deal of opposition to fetal tissue transplantation research has relied on false information. I am outraged by the misuse and distortion of research studies from prestigious universities.

This morning, I received a letter from researchers and scholars at the University of Minnesota who wrote an impressive study on the "Use of Human Fetal Tissue" dealing with the scientific, ethical, and policy concerns of this research.

Their letter objects to a memo being circulated by the American Life League that claims to use the University of Minnesota's study as their source.

The American Life League memo is a blatant misrepresentation of the findings in the university's report.

The University of Minnesota researchers support lifting the ban on fetal tissue. They also enthusiastically support my bill, S. 1902 now included as title II in the bill before us.

I would like to read their letter to set the record straight.

UNIVERSITY OF MINNESOTA,
CENTER FOR BIOMEDICAL ETHICS,
Minneapolis, MN, April 2, 1992.

Hon. BROCK ADAMS,
Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR ADAMS: Thank you for bringing to our attention the memo prepared by Marla Burt of the American Life League addressed to Legislative Assistant for Fetal Experimentation. We would like to respond to the American Life League's objections to the use of federal funds for fetal tissue transplantation research, since they claim to have derived their conclusions from our report "The Use of Human Fetal Tissue: Scientific, Ethical, and Policy Concerns." We fear that some of the selective quotations, quotations made out of context, and the blatant misrepresentations of the contents and conclusions of our report may lead you and other Senators to erroneously conclude that the ban on federal funding of fetal tissue transplantation research should be continued. It should not.

We enthusiastically support the bill that you sponsored, which is now before the Senate. The bill accomplishes several crucial objectives:

It encourages immensely promising research for devastating conditions for which no adequate treatment exists, while obligating researchers to adhere to a rigorous system of federal protections and oversight

It prevents the transplantation of fetal tissue from encouraging women to abort fetuses they otherwise would carry to term

It protects the health and privacy interests of women who may be asked to donate fetal tissue

It requires respectful treatment of fetuses

It requires respectful treatment of tissue recipients, researchers, and others.

The League maintains that federal funds should not be used to support fetal tissue transplantation research because they found evidence in our report that—

(1) Tissue may be obtained from living fetuses;

(2) a market may be created for fetal tissue;

(3) women are not always informed of the risks associated with donating fetal tissue;

(4) abortion practices may be modified in ways that are risky to women;

(5) tissue users may interfere in the woman's abortion decision and/or the physician's choice of abortion procedures;

(6) it is not possible to conduct quality control studies on fetal tissue before transplant; and

(7) fetal tissue transplants have not proved unequivocally successful.

Objections 1 and 2. Not only are they addressed by your bill, but federal and state laws already prohibit the use of tissue from living fetuses and the buying and selling of tissue from dead fetuses.

Objections 3, 4, and 5. It is commendable that the American Life League shares concern for the interests and well-being of the women asked to donate fetal tissue. However, your bill fully and adequately acknowledges and addresses the interests and well-being of women. It is the first fetal tissue policy proposal that does so. A vote against the bill is a vote to allow these three objectionable practices to continue unchecked since researchers receiving private funds may not be subject to federal regulation of any kind.

Objection 6. It is empirically false that fetal tissue can only be transplanted while it is fresh and before it is possible to study its quality. Both the report and the scientific literature indicate that many quality control tests can be, and are, conducted on fetal tissue before it is transplanted in human recipients. Once again, passage of the bill before the Senate would provide potential recipients of fetal tissue transplants with more, rather than fewer, protections. Potential recipients are best protected against unreasonable and unnecessary risks if they are subjects enrolled in federally funded research. Only then are they assured that the study has received rigorous peer review, and prior review and approval by an institutional review board to ensure that the research conforms to the federal regulations for the protection of human subjects, i.e., that the risks are minimized, that the risks are determined to be reasonable given the potential benefits, and that the risks are clearly disclosed to the subject prior to transplantation.

Objection 7. The American Life League believes that because early reports of certain types of fetal tissue transplants available at the time we published our report in January 1990, federal funds should not be used for fetal tissue transplantation research. Specifically they cite reports of fetal tissue transplants in 2 patients with Parkinson's disease, 38 patients with diabetes, and a few patients with immunological disorders, metabolic storage disorders, or victims of high dose radiation. The League falsely suggests that fetal tissue transplants fail to work in children suffering from DiGeorge's syndrome, when in fact fetal tissue transplants have been standard therapy since the 1960s. They also fail to comment on the more promising reports of fetal tissue transplantation research in patients with Parkinson's disease published since we released our report. It is both illogical as well as poor public policy to suggest that the government should only fund research on treatments for devastating illnesses if the treatments have already been proven effective. The issue is whether funds should be available for fetal tissue transplantation research, not therapy.

The American Life League concludes that the only governmental policy that can address their concerns is to prohibit the use of federal funds for fetal tissue research. If the federal government implements the sort of requirements for the donation, procurement, and use of fetal tissue contained in the Senate bill, all parties involved in fetal tissue transplantation research can be respected and protected.

Please let us know if we may answer any further questions.

Sincerely,

DOROTHY E. VAWTER, Ph.D.
KAREN G. GERVAIS, Ph.D.
ARTHUR L. CAPLAN, Ph.D.

UNANIMOUS-CONSENT AGREEMENT

Mr. KENNEDY. Mr. President, on behalf of the majority leader and, as I understand, with the support of Senator DOLE, I ask unanimous consent that the pending amendments be withdrawn; that Senator SIMON be recognized to offer an amendment on the subject of sexual behavior; that his amendment be immediately laid aside; that Senator HELMS be recognized to offer his amendment that is provided for in the consent agreement dealing with the same subject; that there be 2 hours for debate on both the Simon and the Helms amendments to run concurrently and be divided between Senators SIMON and HELMS, or their designee; that neither the amendments nor possible language proposed to be stricken by the amendments be subject to amendment; that at the conclusion or yielding back of the time, the Senate, without any intervening action or debate, vote on the Simon amendment to

be followed immediately, without any intervening action or debate, by a vote on the Helms amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object. Would it be possible before this 2 hour starts that the Senator from Vermont may be able to have a total of, say, 6 minutes for a statement on the bill, no more than that, if that can be part of the request?

Mr. SIMON. Mr. President, if my colleague will yield, I have no objection to that. I am in the awkward situation of having this amendment on the floor and we are marking up the budget. The Budget Committee does not permit proxies. If he could withhold while I offer the amendment, then I would be pleased to agree to that.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

The two amendments requested are withdrawn.

The amendments (Nos. 1754 and 1755) were withdrawn.

AMENDMENT NO. 1756

(Purpose: To impose certain requirements with respect to surveys of sexual behavior)

Mr. SIMON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 1756.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of sections 491 and 492 of the Public Health Service Act; and

(2) the Secretary, in accordance with the provisions of Title II of this Act, will make a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

The PRESIDING OFFICER (Mr. FOWLER). Who seeks recognition?

Mr. KENNEDY. I yield 7 minutes to the Senator from Vermont.

Mr. LEAHY. I thank the Senator from Massachusetts and the Senator from Illinois.

Mr. LEAHY. Mr. President, I do thank the managers, Senators KENNEDY and HATCH, for working with me to include my cancer registries legislation in the NIH reauthorization bill. This new national system of cancer registry is going to bolster all of our efforts to win the war on cancer.

One in three Americans today will get cancer; one in five are going to die of this devastating disease. But there is one cancer in particular that has reached epidemic proportions. It is breast cancer. It is going to strike 180,000 American women this year alone. Every 3 minutes, another woman in this country will be diagnosed with the disease. Every 12 minutes, another woman in the United States of America will die of breast cancer.

Breast cancer is killing our mothers, our daughters, our sisters, our friends. Despite decades of research and experimentation, there is no certain cure for it and there is no known cause for this disease. Why? One reason is the lack of information about cancer—who's getting it, what kind of work they do, what kind of treatment they're receiving, and so on.

We have had a 20-year war on cancer in the United States, but many of our States lack statewide cancer registries that record data on the incidence, stage, and treatment of cancer. Many of the States that do have cancer registries do not have the recourses to maintain their operations.

My bill creates a uniform system of cancer registries in every State so that researchers for the very first time are going to have a nationwide data base, and they can use it to track cancer rates and strengthen prevention efforts.

This bill provides $30 million a year to States to establish or upgrade their cancer registry systems. Planning grants are available to States like my own that currently are without registries.

Mr. President, cancer, and especially breast cancer, knows no geographical bounds. But breast cancer hits women in Vermont, in the Northeast, and in the Mid-Atlantic region with particular harshness.

Mr. President, I would just note here today that this map states it rather graphically. The area in red shows the States with the highest breast cancer mortality rates. Look where it is in the Northeast—Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, the District of Columbia. Again, researchers cannot explain why.

This legislation launches a comprehensive study to determine why these States, the States I have shown, lead the Nation in breast cancer mortality rates. The bill is supported by virtually everyone: the American Cancer Society, the Breast Cancer Coalition, the National Women's Health Network, the American Association of Central Cancer Registries, the National Tumor Registrars Association, and the Congressional Caucus for Women's Issues.

My friend from Vermont, my colleague in the House, Congressman BERNARD SANDERS, has spent countless hours developing this legislation and seeking support for the companion bill in the House. I compliment Congressman SANDERS because he now has 94 Members of the House signed on to the bill.

In this body, I want to thank my cosponsors, Senators ADAMS, MIKULSKI, D'AMATO, DURENBERGER, SIMON, HATFIELD, BINGAMAN, BIDEN, INOUYE, DECONCINI, and, of course my distinguished and valued colleague and friend from Vermont, Senator JEFFORDS, for their work on this bill.

Listen to the names of the people who have signed on. This legislation certainly is not partisan. It is not even regional. It goes beyond all such bounds because we know that in the absence of a cure, prevention and early detection are our best hopes in the fight against cancer. The legislation will give cancer patients a fighting chance, with a uniform system of cancer registries in every State that will help to track cancer rates and strengthen prevention efforts.

Mr. President, I say to all Members of the Senate, look at the map. Look at the map and ask yourself why in your State is the breast cancer mortality rate so high. Even if you are in one of the States with the lowest rate, why is it even that high? Certainly, if you are in a State like my own State of Vermont, with one of the highest rates, again you have to ask yourself, Why? Again, the fact is we do not know.

But with the legislation that has been adopted, including my cancer registries bill, we finally have a fighting chance to find out why. Can we really say to the women of America that we can do any less in the Congress? Let us hope that with this step, in the near future, we will see this map and these colors change and slowly disappear.

Mr. HARKIN. Mr. President, I wonder if my distinguished colleague, the senior Senator from Vermont, would engage me in a brief colloquy relative to this amendment.

Mr. LEAHY. I would be pleased to.

Mr. HARKIN. I wanted to get the Senator's clarification that this amendment recognizes the successful SEER Program run through the National Cancer Institute and that it is not the intent of this amendment to in any way diminish the support for the SEER Program.

Mr. LEAHY. That is correct. The SEER Program is successful and it should be maintained and enhanced.

Mr. HARKIN. Is it also your understanding that entities currently receiv-

ing support from the SEER Program would be eligible to compete to participate in the cancer registry program established by this amendment?

Mr. LEAHY. The Senator from Iowa is correct, to the extent that the cancer registry program does not supplant the SEER Program and its support.

Mr. HARKIN. I thank my friend from Vermont for those clarifications and commend him on this thoughtful and needed amendment.

Mr. LEAHY. Mr. President, I thank my distinguished colleague from Massachusetts for providing the time, and I yield the floor.

Mr. KENNEDY. Mr. President, we are waiting for the Senator from North Carolina to come to the floor to present his amendment and give him an opportunity to address this subject matter. Senator SIMON and I have spoken about the importance of his amendment, and I will take just a few more minutes to address it in just a short time.

I yield the floor. How much time does the Senator from Washington want?

Mr. ADAMS. Three minutes.

Mr. KENNEDY. I yield 4 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington [Mr. ADAMS] is recognized.

ORDER OF PROCEDURE

Mr. ADAMS. Mr. President, I ask unanimous consent that I might speak out of order for 1 minute.

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

TRIBUTE TO INDIVIDUALS

Mr. ADAMS. I want to pay a special tribute to Laura Brown for her tremendous dedication and intelligence and hard work and to some extraordinary people—Joan Samuelson, Anne Udall, Rev. Guy Walden, and Judy Culpepper.

The lives of these four individuals have been touched by tragedy. In 1987, Joan was diagnosed with Parkinson's disease at the age of 36; Anne's father and our distinguished colleague, Mo Udall, suffers from Parkinson's disease as does Judy's husband Brett; Guy and his wife, Terri, have had to bury two children born with the fatal genetic disease Hurler's syndrome before either reached the age of 10.

But each one of these individuals has turned private tragedy into extraordinary triumph. By sharing their stories and the personal struggles they face every day, they have helped us to see the anguish that millions of individuals and families go through when they receive a diagnosis of Parkinson's or Hurler's disease and find out there are no cures for these devastating fatal diseases.

Fetal tissue transplantation research holds the great promise for finding a cure to these diseases and others. Yet the Reagan-Bush administrations' ban against this life-saving research has blocked its progress.

Today that research will go forward. And the thanks go to Joan, Anne, Guy, and Judy, and all those in the Coalition for Research Freedom, who worked tirelessly for the passage of S. 1902, the Research Freedom Act included as title II in the National Institutes of Health Reauthorization Act, H.R. 2507.

By joining forces, Joan, Anne, Guy, and Judy have accomplished a rare feat: 77 of my colleagues voted yesterday to support overturning the ban.

It is all the more remarkable because these individuals, under ordinary circumstances, might not have come together. They are Democrats and Republicans, pro-choice and pro-life, from all parts of the country, all brought together by compassion and humanitarianism.

Mr. President, we should make no mistake about this victory. It is historic. Scientific freedom will prevail. And I pray that soon we will have the cures for these diseases.

I am glad that I could offer this legislation and see it succeed. And I am honored to have had the opportunity to work with all the people who have dedicated so much of their lives to make this victory a deeply personal one.

I say this because in an important debate like this, under the leadership of Chairman KENNEDY, these people joined together to take a great step forward in the research of the United States and in giving hope to a whole group of people who have had no hope—those with diabetes, with Parkinson's. These extraordinary people deserve our tribute. They deserve our particular thanks.

Above all, I want to give my thanks to my special assistant, whom I could not deal without, Robyn Lipner. She has been one of those who has organized this work on this particular amendment.

I do that at this time because often at the end of a bill we are giving thanks to people, and I know that this will be done, but these particular people worked on a special issue. This special issue, I think, with the chairman and the ranking member of the committee's work, will lead to a whole new type of hope for people with special neurological diseases, and I particularly, in my case, am interested in Alzheimer's disease.

SPECIAL TRIBUTE TO LAURA BROWN

Mr. ADAMS. Mr. President, I rise today to give special recognition to Laura Brown for her tremendous dedication, intelligence, and hard work as a Presidential management intern for the Subcommittee on Aging. Laura's work on the Research Freedom Act, included as title II of the National Institutes of Health Reauthorization Act, H.R. 2507, has been particularly notable. She has devoted herself to long days of work researching the complex medical and ethical issues raised by this bill, preparing excellent talking points on a wide variety of subjects, as well as floor statements on behalf of this terribly important lifesaving legislation. She has also been delightful to work with and the staff of the subcommittee give her the highest praise for her limitless energy, intelligence, and effervescent personality.

Laura will be taking the MCAT medical school entrance exam next Saturday. It is my hope that she will go on to medical school because I am sure she will bring the same dedication and intelligence to the practice of medicine.

Finally, Mr. President, I want to pay special tribute at this time, since Senator COATS had discussed the fetal tissue transplant issue, to a number of members of both the coalition and others that I will refer to later in the afternoon.

I am going to place this in the RECORD at this time. But this is a very important vote. I want to thank the chairman and the members of the committee for having placed this in the bill and for the Members having voted for it yesterday.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Dr. Jim Merchant, a legislative fellow on Senator HARKIN's staff, be given floor privileges today.

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

PAGES 11 AND 12, SECTION 205 STRICKEN

Mr. KENNEDY. I ask unanimous consent that section 205, pages 11 and 12, of the managers' amendment be stricken.

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

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1757

Mr. HELMS. I thank the Chair for recognizing me. I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair would note that under the previous order amendment No. 1756 is set aside.

The Senator from North Carolina is authorized to offer his amendment.

Mr. HELMS. That is correct.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1757.

On page 115, strike lines 1 through 17 and insert the following:

"SEC. 1010.—PROHIBITION AGAINST SHARP ADULT SEX SURVEY AND THE AMERICAN TEENAGE SEX SURVEY.

The Secretary of Health and Human Services may not during fiscal year 1992 or any subsequent fiscal year conduct or support

the SHARP survey of adult sexual behavior or the American Teenage Study of adolescent sexual behavior. This section becomes effective April 15, 1992.".

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

The PRESIDING OFFICER. I believe they have. The Chair is incorrect; they have not. The yeas and nays on the Simon amendment have not been ordered.

Mr. HELMS. I ask for the yeas and nays on the Simon amendment.

The PRESIDING OFFICER. The Chair must advise the Senator that that is not in order because it is not the pending question.

Mr. HELMS. Mr. President, the amendment at the desk would strike section 1010 of the underlying bill and insert language to prohibit forcing the American taxpayers to provide an estimated $25 million to fund two national sex surveys that the Secretary of the Department of Health and Human Services [HHS] has already rejected as being improper, but which Secretary Sullivan would nevertheless be required to fund under the bill as amended by Senator SIMON.

Section 1010 requires the Secretary of Health and Human Services, whether he likes it or not, to provide money for these two sex surveys—proposed by research bureaucrats on the Federal payroll. Funding for these projects is required even though the Secretary has made the judgment that the surveys are not in the public's best interest and, by the way, the Senate already rejected these two sex surveys last September by a margin of 2 to 1.

Mr. President, the pending amendment strikes out this outrageous mandate in section 1010—and that is what it is, a mandate—because it interferes with the ability of the Secretary of HHS to run his department. HHS and the Justice Department, by the way, justifiably objects to this provision because it clearly intrudes upon the constitutional power of the executive branch as provided by the separation of powers provisions of the Constitution.

Just for the purpose of emphasis, I will reiterate that on September 12 of last year, the Senate voted 66 to 34 in support of my amendment to strike what was then a $10 million, 1 year appropriation designated for these two sex surveys, and to shift that $10 million into what is called the adolescent family life programs to encourage teenagers to abstain from sexual activity. I have placed copies of that rollcall vote on the desks of my colleagues, so that each Senator can recall his or her position of last year.

At this time, I ask unanimous consent that the rollcall vote of September 12, 1991, be printed in the RECORD immediately prior to today's vote on the Helms amendment.

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

Mr. HELMS. Mr. President, despite the overwhelming vote by this Senate on this issue last fall, some elements in Congress have not yet gotten the message. Their resurrection of the sex survey issue in section 1010 is just another example of an unceasing effort to fund their warped social and political agenda with millions of dollars of taxpayers' money.

I resent that, I object to it, and that is why I am on this floor this afternoon with this amendment.

The amendment last September 12 presented Senators with a clear-cut choice between supporting title XX—the only federally funded sex education program that counsels our children to abstain from having sex until they are married—or supporting the reprehensible sex surveys that the sexual liberation crowd is pushing, the real purpose of which is to cook the scientific facts to legitimize homosexual and other sexually promiscuous lifestyles.

No other face can be put on it. The Senate had a clear choice last September between support for sexual restraint or support for homosexuality and sexual decadence.

So, Mr. President, the pending amendment will disclose whether Senators will keep faith with their earlier votes. Once again, the issue is whether we are going to permit the use of the American taxpayers' money to pay for sex surveys deliberately designed and staffed to produce preordained results ostensibly showing that promiscuous, perverted, sexual practices are normal and, therefore, socially acceptable.

Mr. President, the Senate must reject this cruel hoax.

The truth is clear, Mr. President. Children are engaging in sex at younger and younger ages as the so-called sex education agenda moves into the elementary schools—an agenda often camouflaged as so-called AIDS education. But the real intent and real effect of these programs unmistakably desensitizes children at younger and younger ages to immoral and deadly sexual lifestyles.

Mr. President, I am persuaded that the majority of Americans clearly understand that the real purpose behind the current sex survey proposals is not to stop the spread of AIDS. The real purpose is to compile supposedly scientific and Government-sanctioned statistics supporting ultra-liberal arguments that homosexuality is normal behavior.

Bullfeathers. There is nothing normal about it, Mr. President. I believe the majority of the American people know that. I believe that the majority of the American people resent the use of their money to promote and legitimize this immoral lifestyle.

The handwriting is on the wall. These so-called scientific surveys will be used time and time again to confer acceptability, if not respectability, upon homosexuality by portraying it implicitly or explicitly as normal sexual behavior. However, it is precisely these homosexual practices that account for at least 85 percent—perhaps more—of America's AIDS cases.

In short, the results of the sex surveys will be used—and you can see it coming—to legitimize the very behavior that accounts for the overwhelming majority of AIDS cases in this country.

Mr. President, from a scientific perspective, sex surveys, by their very nature, are neither objective nor scientific. On average, 40 to 60 percent of the people asked to participate in a sex survey will say: Forget it, I am not participating. The Centers for Disease Control will tell you that any refusal rate higher than 15 percent will skew any survey's results by at least 50 percent.

The participation rates, Mr. President, are so low because most Americans resent even being asked to answer questions about how often they engage in sex, with whom, their preferences for sexual partners, and which sex act they prefer.

Well, that raises the question of who does participate in their purportedly scientific surveys? Only those with the desire to share the graphic details of their sexual intimacies, real or imagined—people who obviously favor lewd or perverse sexual behavior.

Ask yourself, Mr. President, what kind of parents would even consider allowing their teen-aged child or children to answer questions contained in the NIH's proposed teenage sex survey.

At this point, Mr. President, I am in somewhat of a dilemma because of the repulsive nature—the repulsive nature—of the questions. I shall not read them in the RECORD. However, I do ask unanimous consent that a photostat copy of some of the questions from the American teenage sex study be placed on each Senator's desk.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

Mr. HELMS. Mr. President, the unacceptable nature of these NIH questions makes it obvious why 40 to 60 percent of Americans refuse even to participate in sex surveys. All the same, this does not deter the avidly prohomosexual members of the scientific community. They know that sexual deviants, perverts, and homosexuals will be disproportionately represented in every one of these sex surveys. In fact, they count on it because they want to buttress their political and social pretense that homosexuality is not deviant behavior, and of course, Mr. President, it is deviant behavior.

Such deception and misrepresentation have been endemic in such sex surveys from the very beginning. Look back at Alfred Kinsey's sex survey in the 1940's. It was the original source for the often cited phony statistic that 1 out of 10 people is a homosexual.

Now, Dr. Kinsey knew before he started what he wanted his survey to prove. So he never—never—disclosed the fact that he had surveyed mostly homosexuals, prisoners, and college students—a sample obviously nonrepresentative of the American people as a whole.

It was, and it was intended to be, a monumental falsehood.

Mr. President, Senators may also wish to know that the Government's supposedly objective research investigators for the proposed survey of adult sexual behavior are absolutely biased.

Let me give you some examples. One of the three investigators is a fellow named Stuart Michaels, a former chairman, now get this, of the American Sociological Association's Lesbian and Gay Caucus. Oh, what an objective guy he is going to be. And then there is a John Gagnon, who has been adviser or board member of organizations such as the National Organization for the Repeal of Marijuana Laws, the National Sex And Drug Forum, and the Institute for the Advancement Of Human Sexuality. I have never laid eyes on John Gagnon, but I do not want him in my living room. I do not think the majority of the American people would.

But let us consider a rather revealing quote from Mr. Gagnon's 1977 book entitled "Human Sexualities." I want to be very slow in reading the following quote because I want Senators to understand what the man said. I quote:

> The horror with which society views the adult who has sexual contact with young children is lessened when one examines the behavior of other mammals.

OK. We are going to compare humans with mammals. Then Mr. Gagnon asserts:

> Sexual activity between adult and immature mammals is common and appears to be biologically normal.

I think, Mr. President, most Americans will not agree with Mr. Gagnon's premise that the same standard be used for judging human sexuality as is used for animals.

Most civilized people would in fact agree, I think, that any adult who has sexual contact with children is—absolutely—an animal.

I commend Dr. Sullivan, the Secretary of Health and Human Services, for recognizing the absurdity of the NIH's proposal to spend $18 million—$7.1 million this year alone—on a national sex survey of American teenagers. Even though Dr. Sullivan canceled this project last year, and God bless him for doing so, section 1010 of this bill proposes to revive it, and Senator SIMON'S amendment merely adds to those provisions in section 1010.

Mr. President, NIH also proposes to spend another $3 million on a so-called SHARP survey of adult sexual behavior that the Office of Management and Budget and the House Appropriations Committee rejected in 1989. See, those projects have been rejected, rejected and rejected. And, here it is again popping up in this bill.

The fact is that despite the administration's commendable past efforts to stop both surveys, the sex liberation crowd is still pushing, pushing, pushing for them.

So, I close for the moment, Mr. President, but let me reiterate—at the risk of being repetitious—that the Senate considered this matter last September 12 when it voted 66 to 34 to strike the funding for these sex surveys. I fervently hope that Senators will do so again by supporting the pending Helms amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time does the Senator wish? I yield 4 minutes.

The PRESIDING OFFICER. The Senator from Vermont [Mr. JEFFORDS] is recognized.

Mr. JEFFORDS. Mr. President, as we all know, a little knowledge is a dangerous thing and we have far too little scientific knowledge on the topic of human sexual behavior, however sensitive and private a topic it may be. It is for this reason that I stand before you in support of the provisions in section 206 of the NIH reauthorization bill that deals with the issue of sexual behavior research.

I also support the Simon amendment which will assist us in making sure that that proceeds in the kind of way that should not lead us into difficulty.

The street knowledge, or ignorance, that typified sexual awareness in my generation, is perpetuated today in the attitudes that prevent a forthright approach to scientific research into human sexual behavior. This cannot continue.

The emergence, in epidemic proportion, of major social ills such as unintended pregnancy and sexually transmitted diseases including AIDS cry out for knowledge. We need data to tell us, not only what is happening, but why and where it is happening.

It is my belief that only through federally funded research can we gain this critical knowledge

David Landers, a Vermonter with a Ph.D. in educational counseling, and who is director of the student resource center at St. Michaels College in Vermont, has devoted his life to counseling young people. He urges me to support section 206 and sexual behavior research because he has come to know how terribly difficult it can be to convince young people, not only that they are at risk, but to take precautions to reduce or eliminate risk.

The only solution is to confront them with firm, indisputable, indeed sometimes shocking evidence. And such evidence can only be rooted in the irrefutable statistical reports that emerge from broad-based, carefully organized, scientific studies.

Mr. President, our young people are at risk. Our younger generation, future generations are at risk. The facts of life, or death, are that AIDS is not going to be cured in the immediate future. We must accumulate, as fast as possible, the behavioral knowledge upon which to base our defenses in order that our children can survive. That is why we need this bill now.

First of all, there is absolutely no evidence that asking adults or teenagers about sexual behavior research will promote or encourage sexual behaviors. Surveys do not give messages about moral or ethical values; they are designed to measure behavior and attitudes. We ask questions about crime in public surveys but these surveys are not alleged to promote crime.

There is also a significant misunderstanding about who will be surveyed about these behaviors. Only persons who have agreed to participate will be asked any questions. They will be told up front what the survey is about and given every opportunity not to participate or to stop if somewhere along the way they find that they do not wish to proceed.

Finally, and in some ways most importantly, it has been suggested that section 206 of this bill directs HHS to conduct sexual behavior research. That just is not the case.

Section 206 does not in any way mandate the conduct of sexual behavior research by the Department of Health and Human Services. Rather, it levels the field for studies of human sexual behavior by directing Secretary Sullivan to give another look at supporting such research. Under this bill Secretary Sullivan would be directed to convene an ethics advisory board that would include at least 50-percent membership from the general public, to review sexual behavior research studies that have been denied funding in the last several years.

Moreover Senator SIMON amendment is to the effect that before any survey of human sexual behavior can be undertaken through NIH, the projects must be reviewed for scientific and ethical considerations. I am cosponsoring this amendment, supporting this further precaution.

I urge that we defeat any amendments that prohibit or otherwise restrict the sexual behavior research provisions in this bill in order that we can undertake the research we so desperately need. I urge Senators to support the Simon amendment.

Mr. President, I yield back the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

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Mr. KENNEDY. Mr. President, I yield myself such time as I may use.

Mr. President, I strongly oppose the amendment of the Senator from North Carolina.

The NIH reauthorization bill is designed to put the genius of this nation behind prospects for saving lives and improving the quality of life for all of our citizens—through rigorously reviewed scientific research that is at the cutting edge and foremost in the world.

The Senator's amendment would politicize the scientific process and undermine our ability to deal with urgent health and social problems, and in so doing, may actually cost us American lives.

As a nation, we face many vitally important public health challenges, among them the skyrocketing rates of teenage pregnancies and sexually transmitted diseases, including HIV, that threaten the health and productive future of our youth.

Numerous prominent scientific and public health panels, including the Institute of Medicine.

Mr. President, I have an Institute of Medicine study here from 1991 where it points out that:

> The epidemic of HIV infection and AIDS is both a biological and a behavioral phenomenon and efforts to contain its spread must look to both biomedical and behavioral sciences for interventions.

It continues:

> Lack of knowledge regarding patterns and determinants of sexual and drug-using behaviors in the general public, as well as in groups at particular risk for HIV infection, has hampered public health efforts to develop health education interventions for the prevention of AIDS. The committee considers increased attention and funding to be warranted, given the lack of scientific data on behaviors related to HIV infection, the seriousness of the HIV/AIDS epidemic, available research opportunities in the field, and the potential public health benefits such research could realize.

And then it points out:

> Data are scarce on initiation into early sexual activities and the influence of family and peer groups on sexual behavior and contraceptive use. It is also unclear how much of the sexual activity of adolescence is motivated by sexual desire and how much results from the desire for peer acceptance and other nonsexual motives.

This is typical of the opinion put forward by the Institute of Medicine and others in the scientific community who believe that developing sound public policy is dependent on this kind of information. The National Academy of Sciences, the National Research Council, and the National Commission on AIDS have all issued reports documenting the need for reliable behavioral research data critical to designing and evaluating effective prevention strategies.

As we approached this debate, organizations such as the American Medical Association, the American Public Health Association, the American Psychological Association and many other medical and public health associations have urged the Senate in clear and unequivocal terms to put sound science and public health principles first. We should remember that today as we consider this amendment. In this case, putting America first means putting public health first.

The real issue is who determines what specific research projects the NIH pursues—research scientists with decades of experience—or the Congress.

The substitute amendment offered by Senators SIMON, JEFFORDS, and myself responds to concerns that Members have about federally funded behavioral research, and at the same time, supports the integrity of the scientific process.

The substitute would require that any proposed study of sexual behavior would be authorized for potential funding only after three specific restrictions had been met:

First, the project would have to be reviewed by the applicable local ethical review panel, in order to ensure that high ethical standards have been met.

If a university makes a request for funding for a study, they have to establish an ethical panel, who will review the request in terms of its ethical and scientific value.

Second, the project would have to be reviewed by the applicable scientific peer review panels in order to ensure that rigorous scientific standards had been met.

Those panels will actually be named by the Secretary himself or herself. They set up these panels. And they are in the best position to determine the scientific validity.

And finally the project would have to be reviewed by the Director of the relevant Institute of the NIH in order to assure that the study would assist in the prevention of infectious diseases—or the improvement in health status. What we are talking about is the need for data critical to our ability to develop appropriate educational materials to prevent the spread of infectious disease—and to improve our health status.

The Simon-Kennedy amendment protects both the public interest and the public health.

There is a long standing tradition of Members on both sides of the aisle standing on this floor to defend the NIH and the peer review process from political whim.

We should continue that tradition today and reaffirm our commitment to sound science and the integrity of the NIH.

If we are to protect the public health and remain in the forefront of medical knowledge and expertise, we must ensure that health-related decisions are made by those who possess the information and the tools necessary to save lives and reduce suffering.

When presented with the same set of amendments, the House of Representatives refused to put politics before public health and voted by a veto-proof majority of 283 to 137 to support the substitute.

I urge my colleagues to vote for science by opposing the Helms amendment and to supporting the substitute.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I am sorry Senator JEFFORDS has left the floor. He repeatedly referred to section 206. For the Senator's information, section 206 in this bill has become section 1010, as the bill has been modified by Senator KENNEDY.

Now, I am going to ask my friend from Massachusetts if he would mind reading—and I am going to send it down to him—the questions in this photostat from one of the proposed surveys. Would the Senator just read them for the Senate's edification.

Mr. KENNEDY. Will the Senator yield for a response?

Mr. HELMS. Sure.

Mr. KENNEDY. All I am saying is we tried to get the various material. If the Senator thinks I am going to pick up a piece of paper from the Senator from North Carolina that I have not had a chance to examine and the authenticity of which I do not know, basically, which I do not know——

Mr. HELMS. Mr. President, I do not yield for that.

Mr. KENNEDY. The Senator is mistaken.

Mr. HELMS. Regular order, Mr. President.

Mr. KENNEDY. So I reject that request.

Mr. HELMS. Regular order.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. You bet.

No, the Senator does not want to read the questions because they are so rotten that he would lose his case on the spot. That is his problem.

Now, these questions may be all right for a nightclub in Miami or Palm Beach at 2 o'clock in the morning on Saturday night, but they are not fit for young children to be asked in their own homes. That is the point I am making.

I am tempted to ask the clerk to read them into the RECORD since Senator KENNEDY is unwilling to do so. He pretends that he does not know what these questions are. He knows what they are.

Mr. President, I have two letters from the Department of Health and Human Services and the Department of Justice, that object to the provisions of title II—in section 202 to be exact—that require the Secretary of HHS to convene a special ethics advisory board

before he can withhold funding from any project the Government researchers at NIH decide they want to fund—like these sex surveys.

More importantly, not only does title II require the Secretary to convene such an advisory board before he can withhold funding, but the Secretary must absolutely fund the project if a majority of that so-called advisory board approves the project. Since at least a third and perhaps as many as half of the board will have to be these same researchers who are pushing this garbage, can there be any serious doubt whether a majority of the board will approve the projects, over the Secretary's objections to them?

I reiterate: Secretary Sullivan, bless his heart, has already rejected these surveys. I think he knows a little bit more than Senator KENNEDY, or Senator JEFFORDS, or Senator SIMON, or JESSE HELMS, or anybody else about what is and what is not appropriate in this field.

So to pretend that this advisory board is going to work out fine, as I heard one Senator say, is nonsense. It will take away from the Secretary his constitutionally derived responsibility and authority.

Mr. President, how can the board be called an advisory board when Secretary Sullivan will be compelled to abide by whatever this board decides? Think about that. That is why the Departments of Justice and Health and Human Services say that this provision violates the appointments clause of the Constitution, and is, therefore, an infringement on the separation of powers provisions set up by the Founding Fathers.

Section 1010—which I would say to Senator JEFFORDS, if he were still here, used to be section 206 in title II before Senator KENNEDY modified the underlying bill—takes this unconstitutional process yet another step. That section says that the two sex surveys at issue—and NIH, by the way, says these are the only two research projects affected by section 1010—"shall be considered to have been recommended for approval" by such a newly required, so-called ethics advisory board as soon as this bill is enacted into law.

So let us not engage in legerdemain or obfuscation. Let us cut through the legal shenanigans, Mr. President.

Section 1010 says that Secretary Sullivan must fund these two sex surveys once this bill is enacted into law. It is as simple as that. And anybody who can read the English language knows not only what this section purports to do, they also know what it is afoot.

I reiterate for purposes of emphasis: Secretary Sullivan has already turned thumbs down on these two surveys. I think he is absolutely right, and I think the vast majority of the American people agree with him.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I yield myself such time as I require.

Mr. President, I want to point out for the RECORD, I do not intend to get into a debate about particular questions in the survey here on the floor of the Senate.

The basic issue in question to be resolved in this legislation is, are we going to meet the ethical and scientific standards I outlined earlier, at the local community and university level, as well as at the NIH. And having done that, we will allow valid and important research to proceed.

That is the way the procedure ought to work. There are some of those who would rather, perhaps, not know what is happening among the young people in this country. But there are certainly some strong public health challenges that beckon our attention.

Each year, more than a million teenagers 19 and under become pregnant; over 10,000 babies are born to girls under 15 years of age. The implications are staggering. We know that adolescents who have children before the age of 20 are more likely to drop out of school and become dependent on welfare. Ninety percent of the teenagers who have children, who do not graduate from high school, will be on welfare 10 years from the time they have their babies.

In 1989 the Federal Government spent over $21 billion for health and welfare services to families of teenage mothers. Sound public policy is cost effective. It saves money. Effective education efforts require an understanding of the context in which decisions about early sexual activities and risky behavior are to be made, and this information is desperately needed.

Sexually transmitted diseases among youth have been skyrocketing in recent years. Fifty-five percent of high school students become sexually active before graduation. More than 2.5 million adolescents contract a sexually transmitted disease each year; and 86 percent of the sexually transmitted diseases occur in people under age 29. These figures highlight an urgent public health concern, and the longer we delay the worse the problem becomes.

These diseases are a major cause of infertility, especially when they are undiagnosed and untreated. Up to 30 percent of all infertility may be due to past sexually transmitted disease infection. Over $2 billion is spent every year on health care costs associated with infertility and the heartache to women and families is immeasurable.

STD's cause painful and costly infections. They cause ectopic pregnancies, fetal deaths, and disabling illnesses. Over 7,000 infants were born with syphilis last year, the highest rate in 40 years, with an estimated medical cost of $128,000 per child.

Prevention and education efforts are essential to halt this tragedy. But our programs will not succeed without strong grounding in behavioral research.

We can no longer afford to proceed in the dark as we attempt to deal responsibly with these serious health problems. The Nation's public health experts have sounded the alarm. They have done so virtually unanimously with virtually no dissent.

Hundreds of years ago in medieval times, men feared witches and burned women. And now in the United States some who fear AIDS want us to burn research.

I want to include in the RECORD the profile on those individuals who were on the Committee to Study the AIDS Research Program of the National Institutes of Health. It was chaired by William Danforth, the chancellor of the Washington University at St. Louis, MO, the brother of our distinguished colleague.

I also include Linda Aiken who is a professor of sociology, University of Pennsylvania; Marshall Becker, associate dean, School of Public Health at the University of Michigan; Victoria Cargill, professor of medicine, University Hospitals of Cleveland, Case Western Reserve University; John Coffin, professor of the department of molecular biology, Tufts University in Boston; R. Gordon Douglas, senior vice president, medical and scientific affairs, Merck, one of the important pharmaceutical companies; James Eigo from New York, Herman Eisen who is the Whitehead Institute professor of immunology at MIT; Melvin Grumback who is the professor of pediatrics at the School of Medicine, University of California; Don Hopkins who is a consultant on the worldwide Global 2000; Max Lang who is professor, chairman, department of comparative medicine at Penn State; Curtis Meinert, professor of epidemiology, Johns Hopkins; Neil Nathanson, chairman of microbiology at the University of Pennsylvania; Philip Schein, president and chief executive officer of U.S. Bioscience; Arthur Silverstein, professor emeritus, Institute of the History of Medicine, Johns Hopkins.

Hardly a very inflammatory group. Anyone can look through this group and recognize these are men and women who are distinguished in their professions and who are attempting to provide a valuable public service—and I think they have.

Mr. President, all of us can effectively demagog particular kinds of questions, statistics, pictures and the like. What we are attempting to do in the amendment is ensure that research which can have an important and positive impact on the spread of infectious diseases is permitted.

It is the overwhelming conclusion of those who have the expertise and responsibility for the development of public health policy, that there has to be sound behavioral research. Some people might not like that, and some people might be offended by the questions presented by the Senator from North Carolina. There may be questions that offend me and offend other Members here, but it seems to me that given the seriousness of the problem, we ought to do all we can to ensure sound public health policy. That is what the Simon amendment, that I am a cosponsor of, would do. I yield 5 minutes to the Senator from Illinois.

Mr. HELMS. The Senator may yield for a question.

The PRESIDING OFFICER. The Senator from Massachusetts does control time.

Mr. HELMS. I will not have the clerk read back what the Senator from Massachusetts said, but it is a violation of the rules. But that is all right. Let Senator SIMON continue.

Mr. KENNEDY. The Senator from Massachusetts does not need a lesson from the Senator from North Carolina. I saw my colleague and friend from Illinois, the prime sponsor of the amendment, and I thought he ought to be entitled to speak. I am sure he will wait his turn. I will yield to him at such time when the Senator from North Carolina finishes.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. The Senator may need some instruction from somebody on a lot of things, but I still say that he yielded to the Senator from Illinois. Now if the Senator from Illinois will seek recognition, he will get it. But I think we ought to abide by the rules.

Mr. SIMON. Parliamentary inquiry, Mr. President. My understanding was that we divided the time between the two sides, and my understanding was the Senator from Massachusetts yielded to me part of the time that has been allotted to those of us who are in favor of my amendment. Is that correct?

The PRESIDING OFFICER. The Chair advises the Senator from Illinois that the time has been divided as under the control of the Senator from Massachusetts and the Senator from North Carolina.

Mr. SIMON. And the Senator from Massachusetts yielded me and I certainly do not want to cut off the Senator from North Carolina——

The PRESIDING OFFICER. It is the Chair's understanding that the Senator from Massachusetts had yielded, from the time allocated to him, to the Senator from Illinois.

Mr. HELMS. Mr. President, that is not the question. I am perfectly willing for the Senator from Illinois to go ahead, but I think the rules of the Senate ought to be abided by. The Senator has sought recognition and he may have it, as far as I am concerned.

The PRESIDING OFFICER. The Senator from Illinois has the floor and is using the time allocated by the Senator from Massachusetts.

Mr. SIMON. Mr. President, I strongly support, obviously, my own amendment and, with all due respect and I respect the sincerity of my friend from North Carolina, but I think he is dead wrong on this. When I say dead wrong, I think there are lives at stake here.

We are not going to protect ourselves through ignorance. It is just very simple. We ought to know what is happening—what is happening among young people, what is happening among adults—so we can stop the scourge of some of the social diseases that are plaguing our society. And on the teenage matter, parental consent is required, I underscore again, as well as voluntary efforts by the teenagers themselves.

But let us find out what is happening. That is why the American Medical Association, the American Psychological Association, American Psychiatric Association, even the American Red Cross which rarely gets involved in any of these things, the American Red Cross—I would point out that on the House side, the amendment which we have offered, carried the House 283 to 137, by more than a 2-to-1 majority. On the House side, there are two physicians, Representative ROY ROWLAND from Georgia and Representative MCDERMOTT from the State of Washington.

Those two physicians helped lead the fight for this. I would point out for any Senators who do not know Congressman ROWLAND is one of the most conservative Members of the House of Representatives, but he is a physician and he knows we do not protect ourselves through ignorance, through a cloak of silence about what is happening.

Will we find out some things we would sooner not know are happening in our society? Maybe we will. I do not know. Will we can find out what the patterns are, why some cities have a much higher rate of teenage pregnancy in terms of ethnic groups? Why do whites in Hartford, CT, have a much higher teenage pregnancy rate than whites in Detroit? Why do Wisconsin and Illinois have a much higher rate of births to unmarried black women, 76 percent, compared to 15 percent in Hawaii? Why the difference?

Will it hurt us to find out, to see what we can do to protect our young people? When the rate of AIDS among teenagers has gone up 40 percent in the last 2 years, are we just going to pretend that this has not happened?

I hope we do the sensible thing, Mr. President, and say let us find our the facts. Let us listen to the physicians of this Nation who advocate finding out the facts. Let us have this survey, conducted, I might add, by the University of North Carolina. Let us find out the facts and then maybe we can save lives. We are certainly not going to save lives through ignorance, by pretending we live in a day and age that we perhaps like when I grew up and the Presiding Officer grew up. Things have changed, some of them for the better, some of them for the worse. But let us find out where we are. Let us find out how we can protect people in our society.

Totally apart from the humanitarian side of it, this year—and the estimates vary—the estimates are that AIDS is going to cost our society $4 to $13 billion. Can we do something to try to prevent the spread of it? Let us find out. Let us have these surveys.

I hope we do the humanitarian thing. I hope we do the fiscal common sense thing by approving the amendment that I have offered and disapproving the amendment offered by my friend from North Carolina.

I respect his sincerity, but he is wrong on this one, dead wrong.

Mr. President, I yield the floor. If no one seeks the floor, Mr. President, I question the presence of a quorum and would ask that the time be allocated evenly to both sides during the quorum call.

The PRESIDING OFFICER (Mr. LAUTENBERG). Is there objection? The Chair hears none, and it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. May I inquire, Mr. President, as to how much time I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina has 34 minutes remaining.

Mr. HELMS. Thirty-four. I thank the Chair.

Mr. President, I am almost amused at some of the statements being made here. When my friend from Illinois—and he is my friend—says that I am wrong, he is also saying that Secretary Sullivan is wrong. He is saying that Secretary Sullivan was wrong last year. He is saying that the Senate was wrong when it voted 2 to 1 in support of my amendment that banned this pair of surveys.

I will stand with Secretary Sullivan and the Justice Department and by the will of the Senate last September. But, is it not odd that the very same people

who oppose my amendment insist that we should treat AIDS as a disease all of a sudden, while in every other area—I would point out—these same opponents insist that we treat AIDS as a social condition. They oppose disclosure of names. They oppose treating AIDS as we do other infectious diseases with respect to immigration, and they oppose each and every effort to stop the spread of AIDS as we do with all other infectious diseases.

I believe the Senator from Utah is not on the floor. Would somebody check in the Cloakroom and see if he is there, because I want to ask him a question.

Until Senator HATCH can come, I suggest the absence of a quorum, with the time being charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I would like to read from an editorial—I yield myself 3 minutes—from the Chapel Hill Herald:

If ignorance is bliss, Health and Human Services Secretary Louis Sullivan wants the United States to live in nirvana.

Sullivan recently canceled a study of teen-age behavior, stating that certain questions on the survey might lead people to underestimate the harm of casual sex. Other conservatives have objected to what they consider distasteful questions on the survey.

The study was designed to roll back the clouds of myth that surround our perceptions about teen-age behavior, especially sexual activity. It would give public health officials valuable information about what types of risky activities teen-agers engage in. That, in turn, would allow health workers to find ways to combat those risky behaviors and prevent the spread of disease.

The study is based on a logical premise. You can't fight an enemy you don't know anything about. And you can't prevent diseases from creating tragedy and even death if you don't know the extent to which those diseases may be spread.

But Secretary Sullivan, who is supposed to look after the health of the nation, apparently has another item higher on his agenda: politics. In the name of morality, Sullivan and Co. have canceled the study. But their "moral" action reveals cynicism and utter lack of high principles. They've allowed partisan, petty politics to interfere with legitimate scientific research. They have placed a higher priority on self-importance and self-righteousness than on the lives that the survey's results could help save.

I ask unanimous consent that the full editorial be printed in the RECORD.

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

POLITICS HIDING BEHIND MORALITY

If ignorance is bliss, Health and Human Services Secretary Louis Sullivan wants the United States to live in nirvana.

Sullivan recently canceled a study of teen-age behavior, stating that certain questions on the survey might lead people to underestimate the harm of casual sex. Other conservatives have objected to what they consider distasteful questions on the survey.

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As U.S. Representative David Price, D-4th, said this week before Congress, sing a public health issue as a political football is "the very antithesis of morality." We couldn't agree more.

Fortunately Price and other members of Congress succeeded in injecting some common sense into the sex-study debate. Price sponsored an amendment to an appropriations bill that would allow the federal funding of sex studies that had been approved by an expert panel. The successful amendment forestalled an opposite measure that would have banned the use of federal money for any sex survey.

It's unclear how the congressional action will affect the teen-age behavior study already canceled through the Health and Human Services Department. The amendment would still have to be passed by the Senate to become law.

But perhaps Secretary Sullivan, who appears to be a better observer of politics than he is of scientific method, will see the light that Congress is shining in his eyes and reconsider his decision.

U.S. health workers need the information that could be gleaned from a scientific survey of teen-age behavior, including sexual behavior. We hope this important research won't continue to fall victim to politics hiding behind the skirts of morality.

Mr. KENNEDY. Mr. President, I would also like to include in the RECORD an article from the Salt Lake Tribune by Linda Ellerbee. I will include that in the RECORD. It has this one particular paragraph:

What problem, you ask? Teen-age sexual activity, teen-age pregnancy and teen-age sexually transmitted diseases (such as AIDS) are at an all-time high in this country, or, to put it in words even a pointy-headed bureaucrat can understand: More youths are "doing it," and youths are "doing it" more. More children are having babies. More children are dying. More children (and their babies) will be dying. If this doesn't bother you particularly, remember that all this costs taxpayers a whole lot of money.

Mr. President, I ask unanimous consent this article along with two others be printed in the RECORD.

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

[From the Salt Lake Tribune, July 27, 1991]

"JUST SAY NO" JUST BREEDS IGNORANCE, WON'T STOP TEEN SEX

(By Linda Ellerbee)

What's the difference between healthy people and ignorant people? None at all, if you ask our government. This is the government that has "Healthy People" as a stated goal for the year 2000. This is the government that admitted that the reasons for and consequences of early sexual behavior are poorly understood. This is the government that now is canceling plans for a comprehensive survey on the sexual behavior of teen-agers because—surprise, surprise—conservatives don't want to give the kiddies any dirty ideas.

Well, that sure ought to fix the problem.

What problem, you ask? Teen-age sexual activity, teen-age pregnancy and teen-age sexually transmitted diseases (such as AIDS) are at an all-time high in this country, or, to put it in words even a pointy-headed bureaucrat can understand: More youths are "doing it," and youths are "doing it" more. More children are having babies. More children are dying. More children (and their babies) will be dying. If this doesn't bother you particularly, remember that all this costs taxpayers a whole lot of money.

These are called facts, which are good things to know, especially if one wants to change them. But sometimes, in order to change facts, even more facts are required, such as "which children?" "just how often?" and "why?"

The study, which had been approved by the Public Health Service, would have asked these questions and more of some 24,000 teen-agers in grades seven through 11. Precautions against invasion of privacy would have been taken. Consent of the teen-agers would have been required. Parental consent would have been required, and parents would have been interviewed also. In the end, we might have learned a thing or three. But this week Health and Human Services Secretary Louis Sullivan scrapped the study because, he said, it might detract from efforts to discourage sex among teen-agers. In other words, asking youths if they're "doing it" would encourage them to "do it."

The way asking somebody if they use drugs would encourage them to use drugs?

Excuse me, but is anyone else in this fair land as tired of the "Just Say No" mentality in our government as I am? Here's another fact. "Just Say No" doesn't work. Not when it's based on ignorance. It hasn't worked with drugs. It won't work with sex. Thinking people need reasons to make decisions, and even a teen-ager is a thinking person now and then.

If drug use is beginning to slow down among our young people these days, it's because of widespread and intensive educational efforts being made to teach children about drugs, about why people use them and what happens to people who use them, not because Nancy Reagan told children to "Just Say No."

This is all so very silly. Ignorance teaches nothing but ignorance. Most people believe they see the world as it is, but most of us really see the world as we are. You don't get people to change by telling them you're right and they're wrong. You don't get peo-

ple to change by telling them they ought to. You don't get people to change by bullying them or by shouting at them. The only way you change somebody's mind is to walk over to where they're standing and say, "Oh, now I see what it looks like from here. Now I understand you. Now let's work from here."

You give them a reason to change.

But first, you've got to get to where they are. That's what this study was about. Getting to where teen-agers are. Getting inside their hearts and minds. Getting answers. Getting facts.

Getting truth.

And showing a little respect for the truth. That, I think, is what bothers me most. What we have now is a government that has little or no respect for the truth, a government that thinks sex education invariably leads to sex, a government that thinks sticking one's head in the sand will make the bad things go away. What a shame we don't live in Disneyland. These days, you stick your head in the sand, somebody's likely to do dirty things to the end sticking up in the air.

But don't tell our leaders about that either. When it comes to truth they don't like, they just say no. And we keep on paying. And so it goes.

'NAUGHTY!' IS NOT ENOUGH

How long will the Bush administration keep reflexively dropping, like a hot burrito, any project about which the far right cries "Naughty, naughty!"? This week, all it took to halt a major federal study of adolescent sexual behavior and factors influencing it was a complaint or two from groups that included the Rev. Pat Robertson's Christian Coalition.

Instantly, Health and Human Services Secretary Louis W. Sullivan put the study on hold pending further review. A bare 24 hours later he canceled it outright.

That response betrays both political cowardice and absence of thought. Two UNC-Chapel Hill professors have spent two years designing this planned five-year survey of 24,000 randomly chosen 7th through 11th graders across the country. The federal Public Health Service approved the project, and it was sponsored, for $18 million, by the National Institute of Child Health and Human Development.

Most important, this study aimed to pin down some actual facts about teen sexual activity and contraceptive use, and to put those facts in context. These researchers are not idle snoops or gossipmongers. Prof. Richard Udry, of the university's respected Department of Maternal and Child Health is director of the Carolina Population Center, Prof. Ronald Rindfuss is a reputable sociologist. They say the study is needed because no previous research has inquired into how teens' social world, including not only peers but family, school and church, affects their sexual lives and vice versa.

That makes sense. And it exposes the knee-jerk shallowness of those who praise Mr. Sullivan's ban on the grounds that we already know all we need to know about teen sex, * * * not enough to know if we want to help teens. It is only enough if we want to live in never-never land.

No questionnaire is perfect—and no one knows that better than a good survey researcher. That's why Drs. Udry and Rindfuss spent years trying to frame questions right and organize the questionnaire to skip what wasn't relevant. A girl who told interviewers she wasn't sexually active, for example, wouldn't be asked other questions about sexual practices.

What shows most clearly their responsible, careful planning is that no teen-ager would have been interviewed without parents' consent—and parents would have been interviewed too.

Mr. Sullivan said the survey could send "inadvertent" messages "counterproductive to his commitment to better communicate the message against casual sex." That is classic doublespeak. Asking for the reasoning behind some questions would have been fine. But to stop the project cold is pandering to those who prefer to deal with difficult reality by sticking their heads in the sand and hoping it'll go away.

On this subject, a nation as concerned about "family values" as this administration and the American people profess to be could certainly use a little hard, factual data—a few answers to the agonized "whys" in the minds of millions of parents and damaged or heartbroken teens. Like it or not, in this day and age, "Naughty, naughty!" is not enough.

RECONSIDER, MR. SULLIVAN

Evidently, when it comes to teen-age sexual behavior, Louis Sullivan would rather not know the facts.

Sullivan, the secretary of Health and Human Services, has cancelled an $18 million, 45-month study of teen sexual mores—a study that would have been led by researchers from the University of North Carolina at Chapel Hill.

Sullivan claimed the study might send an "inadvertent message" to young people, undermining the administration's efforts to persuade teens to say no to casual sex.

Despite Sullivan's careful rhetoric, the thumbs-down was clearly political—an easy way to throw a bone to conservatives and religious fundamentalists who had objected to the study.

One of the study opponents, Gary L. Bauer, president of the conservative Family Research Council, had said the study would be a waste of money because everybody already knows that too many teens are having sex too early with too many partners. Said Bauer: "We ought to be spending $18 million to figure out how to divert them from that conduct instead."

Bauer and the other critics missed the point.

According to Ronald R. Rindfuss, a professor of sociology at UNC and a member of the university's Population Center, the study was an attempt to understand the ways in which schools, families, churches, friends and communities influence teen attitudes and behavior.

The picture that would emerge from such a study might have helped to explain why the United States has such a high rate of teen-age pregnancies. It might have shed light on the factors that lead so many young people to risk exposure to the virus that causes AIDS.

These are problems that cannot be solved in a knowledge vacuum. Simply telling young people to abstain from casual sex isn't going to make the problems go away.

In the interests of science, Sullivan should look for a graceful way to reconsider this hasty and unwise decision.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KENNEDY. I yield 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois has 3 minutes.

Mr. SIMON. Mr. President, if I may respond to the remarks of my colleague and friend from North Carolina—and as he said before we are friends. We are neighbors over in the Dirksen Building, and I respect his sincerity.

No. 1, I was over in the Budget Committee in a markup in the Budget Committee at the same time I have had to be here on the floor.

But on the survey questions, my understanding is those specific questions are no longer part of any survey proposed. But there will be an ethical review board appointed by the Secretary to review all of this if the Secretary so desires. I assume that Secretary Sullivan will appoint a good ethical review board.

Second, when the Senator from North Carolina—if I may have his attention here—says that Secretary Sullivan was wrong, as a matter of fact Secretary Sullivan has been on both sides of this issue.

Mr. HELMS. I did not say the Secretary was wrong.

Mr. SIMON. No; the Senator said by implication that I am saying the Secretary is wrong. And the fact is I am saying the Secretary was right first when he said these were OK, and he was wrong later when he turned them down.

When you say the Senate was wrong, I think the Senate was wrong in its first vote. I do not think the Senate was aware of what was going on. I hope we do the right thing here today.

Finally, I would just say to my friend from North Carolina, and to my colleagues in the Senate, ignorance is not a shield. It is like we are on a train track, and there is a train coming down, and someone says put a bandanna on your eyes so you do not see the train, plug your ears so you do not hear the train, and then maybe the train will stop on its own. That is not what is going to happen.

We better find out what is going on. Ignorance is not going to protect us. We better find out.

If I have any of my time remaining, I yield it to the Senator from Massachusetts.

Mr. HELMS. Mr. President, I yield myself such time as I may require.

Mr. President, since the chairman of the Health and Human Resources Committee raised doubts as to the authenticity of the photostated survey questions, I want to ask the Senator from Utah [Mr. HATCH], the ranking member on that committee, if indeed these questions are authentic and taken from NIH's proposed American teenage study of sexual behavior?

Mr. HATCH. I can tell the distinguished Senator from North Carolina that this draft entitled: "The American Teenage Study, School Administrator Questionnaire; Teenage American Study," sponsored by National Student Child Health and Human Development,

constituent of the U.S. National Institutes of Health, Department of Health and Human Services—the particular information as I understand it the Senator wants verified, verify this whole study, as being a study. But the particular pages that the distinguished Senator has asked to have verified are section 5 entitled "Homosexual Behavior," pages 116 and 117, I believe. They are the pages within the study. They are 2 pages of the study of 124 pages.

Mr. HELMS. I thank the Senator.

Let me say to my good friend from Illinois, Mr. SIMON, that he suggested these questions are no longer relevant because they are not applicable. He is wrong about that, too.

What he is talking about are the questions from the adult survey which have been modified in response to the public outcry over the questions that survey initially proposed to ask. The questions I have put on Senator's desk are still the questions proposed to be asked, as the Senator from Utah has just authenticated as part of the American teenage study of adolescent sexual behavior. These questions are from NIH's proposed teenage sex survey, and the questions in that survey have never been changed, I say to my friend from Illinois. As I said, some questions in the adult survey have been changed, but I would note that even after being changed the adult questions are still utterly disgusting.

Mr. President, I invited the Senator from Massachusetts to read the questions, and I am glad he did not because I do not think we ought to embarrass the public with the nature of these disgusting questions.

Moreover, I do not want these questions to appear in the CONGRESSIONAL RECORD, and I ask unanimous consent that at any place they may have been included they be stricken.

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

Mr. HELMS. Mr. President, a lot of Senators want to get away from here. I think we have ventilated this thing accurately.

I do not believe we are going to change any minds one way or the other. So, like my friend Albert G. Edwards, former pastor of the Presbyterian Church in Raleigh used to say: "You do not save any souls after 12 o'clock." It is not 12 o'clock. It is 5:25.

But before I yield back the remainder of my time, assuming Senator SIMON and Senator KENNEDY will yield back their time, I think I should reiterate that the Simon amendment will merely direct that the two outrageous sex surveys at issue go through the process set out in section 202 of this bill. The Secretary of HHS and the Department of Justice object to that process because it infringes on the ability of the Secretary of HHS, Dr. Sullivan, to reject such programs when he determines—as he is charged by the President of the United States to do—that such projects are not in the public's best interest.

Now, I am willing to yield back the remainder of my time, if Senators KENNEDY and SIMON will do likewise, so we may vote on the two amendments.

Mr. KENNEDY. Mr. President, I would make a very brief comment, and clarification.

I ask consent to be able to include procedures which are followed in the utilization of this survey. Any young person to be questioned in this survey would have to have parental permission. In addition, other procedures were also built into the study design.

I will include those in the RECORD at an appropriate place.

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

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME,
Washington, DC, March 30, 1992.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, Dirksen Building, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As the Senate considers H.R. 2507, the NIH Revitalization Amendments of 1991, we wish to express our strong support for research related to obtaining information about behaviors that place an individual at risk for contracting HIV. While the National Commission on AIDS has not taken a formal position on any particular research study, the Commission does believe behavioral and social research has been poorly funded thus far in the HIV epidemic, and research on sexual and drug-using behaviors deserve much greater emphasis if there is to be hope for altering the course of the epidemic. This is particularly true for adolescents.

In March of last year, the National Commission on AIDS devoted an entire day of public hearings to the issues surrounding adolescence and HIV disease. Repeatedly, the Commission was told that we needed to develop more effective ways of getting the prevention message to teenagers who, according to numerous studies and the testimony of our witnesses, frequently engage in high risk behaviors. The development of more effective prevention programs will depend a great deal on what we can learn about when, how and why teenagers engage in behaviors that put them at risk for HIV disease. We desperately need this information. Our children's lives depend on it.

Sincerely,

DAVID ROGERS, M.D.,
Vice-Chairman.

JUNE E. OSBORN, M.D.,
Chairman.

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, March 31, 1992.

Re Surveys of human sexual behavior.

Hon. EDWARD KENNEDY,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: The American Medical Association urges the Congress to provide the National Institutes of Health with the funds necessary to conduct human sexual behavior surveys.

These studies are designed to provide current and reliable information crucial to our efforts to fight the HIV epidemic. With accurate estimates of the number of people currently engaging in behaviors that put them at risk of HIV infection, public health officials can better predict future patterns of the spread of HIV and develop appropriate prevention and control programs. This data will also be useful for developing public health measures to reduce sexually transmitted diseases.

Our present lack of up-to-date and accurate data in this area is a compelling reason for funding national surveys.

We recognize that these surveys deal with a very sensitive subject and that some political objections to them have been raised. However, their development has involved an impressive scholarly and scientific approach. Moreover, extensive review procedures have been designed to assure that impartial scientific experts and government officials will review every step of these projects.

As our nation continues to spend large amounts of scarce resources on combatting AIDS and HIV infection, it is imperative that public health officials should base their efforts on the knowledge that can be gained by sexual behavior surveys.

Sincerely,

JAMES S. TODD, MD,
Executive Vice President.

ORGANIZATIONS FOR RESEARCH ON HEALTH AND AIDS RISK BEHAVIOR,
Washington, DC, June 20, 1991.

Hon. LOUIS SULLIVAN, M.D.,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR DR. SULLIVAN: We, the undersigned research, medical, and education organizations, are writing to express our concern about the long delay in HHS approval of the Survey of Health and AIDS Risk Prevalence (SHARP). This survey, which reflects significant revisions to an earlier and widely-discussed version, will provide much-needed national data on sexual behavior related to the contraction and transmission of AIDS and other sexually transmitted diseases (STDs). It is our understanding that the SHARP project has passed review by the Assistant Secretary for Health and awaits a final decision by you. We urge your prompt review and approval of the survey.

Study after study attests to the increasing need for better knowledge about the circumstances under which people engage in sexual behaviors that put them at risk of contracting dangerous diseases and spreading them to others. This knowledge is necessary for developing effective public health and education strategies to stem the spread of HIV/AIDS and other STDs, now afflicting hundreds of thousand of Americans. But we never have gathered comprehensive national data on sexual behavior representative of all groups in our society, even though numerous reports and commissions have recommended such an effort.

Just this past March, the Institute of Medicine issued a report on the state of the AIDS research program at NIH calling for "increase[d] support for behavioral research, especially for basic behavior research . . . on behaviors relevant to the transmission of HIV, including but not limited to human sexual development and practices." The report specifically addressed continued HHS delay in approving the revised SHARP instrument, and recommended that "the pretest questionnaire for the [NICHD's] National Survey of Health and AIDS Risk Prevalence should be finalized and released, and the study should be allowed to proceed immediately" (p.70).

This recommendation mirrors others made over the past few years from equally eminent bodies. In 1988, the President's Commission on the Human Immunodeficiency Virus Epidemic recommended that HHS work with NICHD and CDC and "continue to fund national baseline data collection activities with longitudinal components that would permit a better understanding of sexual practices . . ., attitudes, and risk behavior of adults and adolescents . . ."

Similarly, the National Academy of Sciences in its 1989 report, "AIDS: Sexual Behavior and Intravenous Drug Use," urged support for the collection of data that estimate "the prevalence of the sexual risk-taking behaviors associated with the acquisition and spread of HIV infection in various populations, including those at higher and lower risk," with a high priority on "studies of the social and societal contexts of sexual behaviors.

Further delay of the SHARP study should not be permitted. The survey instrument has been developed under the guidance of NICHD by researchers with outstanding scientific credentials, and is sensitive to the delicate nature of questions about sexuality. It was reviewed through the NIH peer review process. Furthermore over the past two years, the original survey instrument has been revised to address concerns raised about the propriety of asking deeply personal questions. All information requested in the revised survey is directly relevant to STD/AIDS epidemiology or prevention. The data collected through SHARP will be used to develop accurate estimates of the number of people currently engaging in behavior that puts them at increased risk of STD infection, to predict future patterns of the spread of AIDS, and to provide a base for AIDS prevention and control programs.

There have been almost 79,000 AIDS related deaths since the effort to conduct this survey began, and it is expected that over 40,000 new HIV infections will occur this year alone. We must use every tool at our disposal to prevent the further spread of this disease and others similarly transmitted. We strongly urge your immediate approval of SHARP, so that the feasibility phase of the study can begin without further delay.

For reply purposes, please contact Judith D. Auerbach, Ph.D., Government Liaison, Consortium of Social Science Associations, 1522 K Street, N.W., Suite 836, Washington, D.C. 20005.

Sincerely,

The Alan Guttmacher Institute, American Academy of Pediatrics, American Anthropological Association's Task Force on AIDS, American Association for the Advancement of Science's Committee on Scientific Freedom, American College of Obstetricians and Gynecologists, American Educational Research Association, American Fertility Society, American Federation for Clinical Research, American Psychiatric Association, American Psychological Association, American Psychological Society, American Social Health Association, American Sociological Association, Association of American Universities, Association of Schools of Public Health, Consortium of Social Science Associations, Council of Professional Associations on Federal Statistics, Federation of Behavioral, Psychological and Cognitive Sciences, National Association of State Universities and Land-Grant Colleges, Population Association of America, Society for Research in Child Development.

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, January 16, 1992.

Hon. LOUIS SULLIVAN, M.D.,
Secretary, Department of Health and Human Services, Humphrey Building, Washington, DC.

DEAR MR. SECRETARY: As you begin the fiscal 1993 budget process, I am writting to urge you to reconsider your decision to suspend the American Teenage Study.

Our primary concern is the impact of your action on the merit-based scientific review process that has long been a singular strength of the National Institutes of Health (NIH). This study is a research project grant which was thoroughly and extensively reviewed through the usual NIH peer review process and by various officials of your department including Dr. James Mason, Assistant Secretary for Health, and Dr. Bernardine Healy, director of the NIH. It is our understanding that these higher levels of review included a careful evaluation of the social and ethical implications of the proposed research. Suspending a research grant that has been awarded after such extensive review sets a harmful and dangerous precedent.

In addition, we are concerned about the effect this decision will have on teens and young adults. Today, adolescents live in a complex environment, and we need to better understand that environment. There are increasing numbers of young adolescents who become parents; sexually transmitted diseases are on the rise; and the adolescent population is expected to have the greatest increase in the rate of HIV infection. As you well know, this is especially true for minorities and children in poverty. These are not trivial problems; their consequences will profoundly affect the lives of an extraordinary number of teenagers and tomorrow's adults as well.

The Academy supports research in the area of human sexuality and recognizes in particular the need for studies designed to improve insights into sexual attitudes and practices of adolescents. We believe the American Teen Study will do this. It is designed to obtain vital information about adolescent behaviors that contribute to the risk of AIDS, other sexually transmitted diseases, and unintended pregnancy. Its results will be used to better identify high-risk groups and improve intervention mechanisms. This research is not a threat to our adolescents, but not undertaking this study will be, as well as imperil the integrity of the federal research process.

Sincerely,

DANIEL W. SHEA, M.D.,
President.

AMERICAN PUBLIC HEALTH ASSOCIATION

(Interim policy statement adopted by the Governing Council, Nov. 13, 1991)

LB2: HUMAN SEXUAL BEHAVIOR RESEARCH

The American Public Health Association

Acknowledging that the incidence of HIV (human immunodeficiency virus) infection and other sexually transmitted diseases affects almost 12 million Americans each year, 86 percent of whom are aged 15 through 29;[1] and that half of the six million pregnancies which occur in the United States each year are unintended;[2] and

Recognizing that current projections about likely trends and patterns of the incidence of these diseases and unintended pregnancies are being made without basic information about the behaviors that determine them; and

Noting that the projections of the Centers for Disease Control of the number of people in the United States who engage in high-risk sexual behavior are still dependent on data from the 1940s; and

Further noting that several important reports have strongly recommended that research on sexual behavior be conducted in order to address these crises, including a 1991 Institute of Medicine report that stated "these protracted delays have had an injurious effect on the scientific process and on the progress of behavioral research on sexual behavior;"[3] and

Recognizing that this information is essential for designing educational efforts and intervention strategies; and

Acknowledging that the United States Public Health Service's (PHS) targeted reduction in unintended pregnancies to no more than 30 percent of pregnancies (a 46 percent decrease) in the Year 2000 Objectives for the Nation;[4] and

Acknowledging further that the PHS's goal for containing HIV infection is no more than 800 per 100,000 people by the Year 2000;[5] and

Knowing that survey research, with informed consent and in the case of minors with parental approval, is an acceptable method of obtaining information; and

Knowing that the Scientific Review Committees and Advisory Council of the National Institutes of Child Health and Human Development has approved two proposals for funding with high priority scores, the American Teenage Study of the Population Center, University of North Carolina, and the Social Demography of Interpersonal Relations Study, of the National Opinion Research Center, University of Chicago; and

Observing that, in July 1991, Department of Health and Human Services (DHHS) Secretary Louis Sullivan withdrew the NIH-approved contract for the American Teenager Study;[6] and

Observing that in October 1991 the NIH staff indefinitely postponed the Social Demography of Interpersonal Relations Study;[7] and

Recognizing that the above mentioned studies are but two highly publicized examples of attempts by the Administration to quash important and needed research related to human sexual behavior; and

Observing that in November 1991 the Congress of the United States agree to delete funding for two approved surveys of human sexual behavior from the appropriations legislation for DHHS;[8] therefore

1. Views with alarm and deplores the attack on academic freedom and independence of scientific inquiry in the area of human sexual and fertility related behavior;

2. Strongly opposes the unprecedented and egregious action of rescinding and indefinitely deferring approved grants;

3. Urges Congress to direct DHHS to conduct and fund research on the health aspects of human sexual behavior, and that such research should be supported on an ongoing basis if a determination is made by appropriate experts at NIH that the knowledge gained from such research will assist in reducing the incidence of HIV or other sexually transmitted diseases, or unintended pregnancy, or in improving reproductive health or other conditions of health; and

4. Urges DHHS to proceed with such research based on the scientific merits of each proposed project rather than with regard to political considerations.

REFERENCES

[1] Healthy People Year 2000: National Health Promotion and Disease Prevention Objectives: Sexually Transmitted Diseases: Washington, DC: US Department of Health and Human Services, 1990, pp. 494-495.

[2]Harlap S. Kost K. Forrest JD: Preventing Pregnancy, Protecting Health: A New Look at Birth Control Choices in the United States. New York: Alan Guttmacher Institute, 1991. 66-70.

[3]The AIDS Research Program of the National Institutes of Health. Washington, DC: Institute of Medicine, 1991. pp. 66-70.

[4]Healthy People Year 2000: National Promotion and Disease Prevention Objectives: Family Planning. Washington, DC: US Department of Health and Human Services, 1990, p. 193.

[5]Op. Cit: HIV Infection, 479.

[6]Rich S: HHS Cancels Teen Survey after Conservatives Complain. The Washington Post, July 24, 1991.

[7]Another Survey on Sexual Behavior Shelved by HHS: The Nations Health, November 1991, p. 5.

[8]Congressional Record. September 12, 1991, 12890.

ORGANIZATIONS SUPPORTING SEXUAL BEHAVIOR RESEARCH

[As of December 13, 1991]

AIDS Action Council.
Alan Guttmacher Institute.
American Academy of Pediatrics.
American Anthropological Association, Task Force on AIDS.
American Association for the Advancement of Science, Committee on Scientific Freedom and Responsibility.
American Association of University Professors.
American College of Obstetricians and Gynecologists.
American Educational Research Association.
American Federation of Clinical Research.
American Fertility Society.
American Foundation for AIDS Research.
American Home Economics Association.
American Medical Association.
American Public Health Association.
American Psychiatric Association.
American Psychological Association.
American Psychological Society.
American Red Cross, Office of HIV/AIDS.
American Social Health Association.
American Sociological Association.
Association of American Medical Colleges.
Association of American Universities.
Association of Reproductive Health Professionals.
Association of Schools of Public Health.
Center for Population Options.
Child Welfare League of America.
Consortium of Social Science Associations.
Council of Professional Associations on Federal Statistics.
Federation of Behavioral, Psychological and Cognitive Sciences.
Girls, Incorporated.
Human Rights Campaign Fund.
National Association of Social Workers.
National Association of State Universities and Land Grant Colleges.
National Council of Family Relations.
National Leadership Coalition on AIDS.
Population Association of America.
Population Resource Center.
Society for Research in Child Development.
Society for Research on Adolescence.
Society for the Scientific Study of Sex.
Transnational Family Research Institute.

INSTITUTE OF MEDICINE

(Report of a Study—The AIDS Research Program of the National Institutes of Health—1991]

BEHAVIORAL RESEARCH

The epidemic of HIV infection and AIDS is both a biological and a behavioral phenomenon, and efforts to contain its spread must look to both biomedical and behavioral sciences for interventions. Since the discovery of the virus and its modes of transmission, there have been significant advances in treatment for HIV disease. Historically, however, the discovery of effective chemotherapies and vaccines has not guaranteed success in controlling sexually transmitted diseases (STD) or other types of infection. For example, although penicillin has been an important and effective part of the campaign against syphilis for more than 40 years, this sexually transmitted disease persists and in fact today is on the rise (Rolfs and Nakashima, 1990). Outbreaks of childhood measles also still occur, despite the availability of a safe, effective vaccine. Disease prevention, then, often requires more than biomedical technologies. HIV infection is an example of an incurable but preventable disease that is amenable to behavioral intervention.

The committee believes NIH has neglected AID-related behavioral research, the results of which are inadequate funding and an underdeveloped knowledge base (compared with such disciplines as immunology and virology), absence of a behavioral research infrastructure (including a paucity of Ph.D.-level professionals), and lack of understanding of the behaviors central to the transmission of HIV. Lack of knowledge regarding patterns and determinants of sexual and drug-using behaviors in the general public, as well as in groups at particular risk for HIV infection, has hampered public health efforts to develop health education interventions for the prevention of AIDS. The committee considers increased attention and funding to be warranted, given the lack of scientific data on behaviors related to HIV infection, the seriousness of the HIV/AIDS epidemic, available research opportunities in the field, and the potential public health benefits such research could realize.

In fiscal year 1989 the Office of the Assistant Secretary for Health (OSAH) reported that NIH spending for behaviorial research was $5.7 million. Of this amount, funding for human behaviorial research was $4.6 million (0.76 percent of the total NIH research budget); the remaining $1.1 million went to the Animal Resources Program in the Division of Research Resources to support the use of chimpanzees in studying HIV infection. OASH estimates for behaviorial research in fiscal years 1990 and 1991, respectively, are $3.4 million and $3.2 million, or 0.45 and 0.39 percent of the total NIH research budget. Thus, funding for human behavioral research has decreased since fiscal year 1989 both in total amount and as a percentage of the total NIH AIDS research budget.

Behavorial research spans a broad spectrum. It can include the use of epidemiological techniques to identify the distribution of behavorial risk factors, and basic research designed to understand the etiology, or underlying determinants, of behavior. Such research may include; for example; studies of the physiological, psychological, and social mediators that influence and modify behaviors relevant to the transmission of HIV. It also includes efforts to evaluate the effectiveness of interventions intended to modify behaviors. This may include design and assessment of strategies to prevent the imitiation of high-risk behaviors, reduce recidivism, or test the efficacy of culturally specific behaviorial strategies to reduce risk behaviors for HIV infection.

Significant research opportunities exist in the field of behaviorial research. For example, very little is known about the prevalence of sexual behaviors, especially in minority groups, the adolescent population, women, the over-50 age group, and prostitutes (male and female); even less is known about their etiology. As an illustration of a significant data deficit, estimates of the number of men who engage in same-gender sex figure prominently in calculations of HIV prevalence; yet the figures used by the PHS in those calculations were derived from Kinsey's studies on male behavior from the period 1938-1948 (Turner, 1990). The precision of two methods currently used to forecast the AIDS epidemic, trend analysis and back calculation, is also hampered by a lack of information about the basic determinants of HIV incidence; for example, little information is available about the average number of sexual contacts within certain population groups and the probability that these contacts are made with uninfected individuals (Hellinger, 1990). Data are scare on initiation into early sexual activities and the influence of family and peer groups of sexual behavior and contraceptive use (CDC, 1990b). It is also unclear how much of the sexual activity of adolescence is motivated by sexual desire and how much results from the desire for peer acceptance and other nonsexual motives (Turner et al., 1989).

Significant gaps also exist in understanding intervention strategies. It is known that, for behavior to change, individuals must recognize a problem, be motivated to act, and have the knowledge and skills necessary to perform the action. However, data of how best to present information, instill and maintain motivation, and inform individuals remain incomplete. For example, studies have shown that information is necessary but often insufficient by itself to effect behaviorial change; the association between knowledge and attitudes on one hand, and behavior on the other, however, remains unclear (Turner et al., 1989). The effectiveness of fear as a motivating element in AIDS prevention messages also is not well understood; nevertheless, PHS-sponsored information and prevention and treatment programs for sexually transmitted diseases often employ fear-evoking messages. Research has shown that, to be effective, information must be delivered in a manner that is comprehensible, convincing, and relevant to the audience it is intended to reach. Achieving this goal will require a much greater understanding of the perspectives and culture of the various ethnic, racial, social, age, and sexual orientation groups that currently make up the national population (Turner et al., 1989). Also necessary is a better understanding of the effects of different intervention strategies among different populations. For example, although some strategies have been effective in certain populations (i.e., gay men), it is not known whether the same approaches would successfully solicit cooperation and motivate change in other populations such as adolescents, minorities, women, or prostitutes.

The public health consequences of continued neglect and inadequate funding of behavioral research could be severe. Effective interventions require an understanding of the behaviors that place a person at risk for acquiring HIV/AIDS, especially in view of the fact that modification of risky behavior is the only currently available way to prevent HIV infection. Getting ahead of the epidemic requires foresight to limit the spread of infection in populations and regions that currently have a low prevalence of AIDS and HIV infection; such opportunities should not be overlooked, for, once lost, they cannot be recaptured. Adolescents are generally recognized as a population for which prevention activities could have a great impact. The

large and growing middle-age and older segments of the population also deserve attention to forestall any possibility that the epidemic may become established in the more than 60 million people aged 50 and older. Currently, women of childbearing age still have a low HIV prevalence rate overall and also represent an excellent opportunity to avert the spread of HIV infection. Yet before intervention strategies can be designed to prevent the spread of HIV to those who are not yet infected, it is essential to know which behaviors to target, in whom they occur, and how they can be modified.

Given the lack of understanding of behaviors related to HIV infection and of ways to change them, the committee believes that there is a role for ADAMHA, CDC, and NIH in supporting behavioral research. All three agencies currently conduct behavioral research, but the type and focus vary significantly according to each agency's respective mission. ADAMHA's mission is to find scientifically based solutions to alcohol, drug, and mental health problems and to promote effective strategies to deal with the health problems associated with the abuse of alcohol and drugs and mental illness (ADAMHA, 1990). The agency sponsors research that principally addresses the neuropsychological changes encountered after HIV infection occurs and the etiology and role of drug abuse (including alcohol) in HIV infection. the ADAMHA HIV/AIDS program has a unique focus in that the agency combines research on the biological, behavioral, and psychological aspects of HIV infection with intervention research and the provision of clinical services. In contrast, CDC's mission is to prevent unnecessary disease, disability, and premature death, and to promote healthy lifestyles (CDC, 1990a). To this end CDC supports mainly applied behavioral research that is directly related to the implementation and assessment of broad-scale education and prevention programs. NIH's mission is to conduct and support research on the causes, diagnosis, prevention, and cure of diseases in humans (NIH, 1987). In keeping with this mission, NIH supports a small amount of basic behavioral research on the determinants of HIV-related behaviors based on the institutes' specialized constituencies and research interests. For example, investigators at NICHD are studying developmental components of sexual behavior, whereas NIAID researchers are incorporating intervention behavioral research into clinical research on sexually transmitted diseases. Thus, ADAMHA supports basic and applied research; CDC focuses on programs of disease surveillance and control, with mainly applied research examining behavioral change interventions (particularly in high-risk groups) as part of specific efforts in disease prevention and health promotion; and NIH supports mostly basic research, whose findings provide the basis for the design of actual interventions by CDC and other public health agencies.

As the government's principal biomedical research organization, NIH sponsors behavioral research in areas other than AIDS in which the disease burden to society is significant, such as cancer and heart disease. For example, NCI's Cancer Prevention and Control Program supports behavioral research on a range of topics from nutrition to smoking cessation. In fiscal year 1990, NCI spent 5 percent of its budget on behavioral research. NHLBI also devotes substantial funding to behavioral research and interventions in areas such as hypertension and cardiovascular disease; the institute spent approximately 3.3 percent of its budget on behavioral research. Overall, NIH devotes approximately 3.1 percent of its funding to behavioral research (Raub, 1988). The comparable figure for AIDS behavioral research was 0.45 percent. (This is not to say that the proportion of NIH resources devoted to behavioral research has been optimal; indeed, the Senate Committee on Appropriations directed NIH to establish a comprehensive 10-year plan for steadily increasing its funding of health and behavioral research [U.S. Congress, Senate, 1989].)

CDC has been making a large investment in applied behavioral sciences research with regard to AIDS. This fact, however, does not relieve NIH of its responsibility to support and conduct such research; indeed, other committees (e.g., Turner et al., 1989) have noted particularly pressing needs for behavioral research on AIDS and strongly recommended an NIH role. This committee believes that, similar to its work in heart disease and tobacco use, NIH can play a key role in supporting basic research to understand the etiology of sexual and drug-using behaviors and in initiating demonstration projects to evaluate intervention strategies. This research may also benefit efforts to prevent transmission of other sexually transmitted diseases and the initiation and continuation of illicit drug use. The committee commends present NIH efforts (i.e., NIAID's efforts to integrate behavioral research with biomedical research through its Sexually Transmitted Diseases Cooperative Research Centers and NICHD's research on adolescents) but considers more research to be needed.

(Recommendation 3.9: The NIH AIDS program should increase its support for behavioral research, especially for basic behavioral research (e.g., research designed to understand the etiology or underlying causes of behaviors and evaluate the effectiveness of interventions to modify particular health-related behaviors) on behaviors relevant to the transmission of HIV, including but not limited to human sexual development and practices and (in coordination with ADAMHA) drug addiction and abuse.)

As behavioral research becomes a greater part of the NIH and PHS research portfolio, it will require careful planning and coordination to develop appropriate research agendas and clearly define agency roles. At present PHS has mechanisms in place to designate responsibility for research areas and prevent unproductive duplication; these include agreements between NIH institutes, clearance of proposed RFAs through the NIH Office of Extramural Programs, posting of proposed RFAs on a computerized bulletin board for review by other NIH and ADAMHA components, and informal discussion among researchers. These mechanisms, however, do not provide for early-stage coordination and lack high-level PHS oversight. At one point, the PHS Executive Task Force on AIDS had several subcommittees focusing on specific components of behavioral research (e.g., addiction and behavior), but these committees have been disbanded in preparation for a reshaping of all task force committee structures. This committee believes that the PHS should sponsor conferences, involving appropriate NIH, CDC, and ADAMHA officials and behavioral scientists, to identify promising areas of behavioral research, develop a PHS behavioral research agenda, and make recommendations on methods to improve coordination among PHS agencies sponsoring behavioral research.

As noted earlier in this section, the AIDS epidemic has highlighted the need for current data that are representative of the general population to guide the design of behavioral interventions on sexual behavior. To fill this data gap, NICHD proposed a national survey of health behaviors and AIDS risk prevalence that included questions on sexual relationships, partner characteristics, sexual behaviors with partners, and behaviors such as drug use that put people at risk for AIDS. The survey was also intended to provide a research basis for designing, implementing, and evaluating education and intervention programs to stop the spread of HIV. Despite the value of such information, however, the survey has not as yet been performed. NICHD sought to conduct a pretest to refine the questionnaire and identify possible design problems and sent the pretest survey questionnaire to OMB in December 1988. Since then it has undergone multiple reviews by OMB, the NIH Director's Office, the Office of the Secretary of Health and Human Services, and OASH, which has been holding the revised pretest since July 1989. Currently, negotiations continue regarding the content and design of the questionnaire, and the future of the full survey is uncertain. The committee believes that these protracted delays have had an injurious effect on the scientific process and on the progress of behavioral research on sexual behavior. The committee believes that the National Survey of Health and AIDS Risk Prevalence will provide invaluable information for efforts to prevent the spread of AIDS and HIV infection and should go forward as soon as possible.

(Recommendation 3.10: The pretest questionnaire for the National Institute of Child Health and Human Development's National Survey of Health and Aids Risk Prevalence should be finalized and released, and the study should be allowed to proceed immediately.)

NURSING RESEARCH

High-quality nursing care of persons with AIDS, in conjunction with advances in medical therapy, is an essential component of ensuring a reasonable quality of life for persons who are living with HIV infection. Owing in part to improvements in treatment, the number of persons alive with AIDS continues to grow. CDC estimates that by 1993 between 151,000 and 225,000 persons will be alive with AIDS, compared with 48,000 in 1988, more than a threefold increase in five years (see Figure 1.1). NIH's stated goal is to convert HIV infection into a chronic, manageable illness, a shift in emphasis that will also require a concomitant shift in research foci. Currently, NIH supports a relatively small amount of research (less than 0.2 percent of AIDS research and training funds) on the chronic aspects of HIV infection: research addressing the care needs of HIV-infected persons amounted to only $730,150 in fiscal year 1989, and funds for training of professionals in this area totaled $119,504 (NCNR, 1989).

The purpose of nursing research is to effect both short- and long-term improvements in nursing practice, in addition to restoring patient health and speeding recovery from illness (Larson, 1989). Nursing research addresses a wide range of topics including relief of distressing symptoms resulting from the disease process, development of interventions to alleviate physical symptoms that are secondary to or incompletely relieved by medical intervention, identification of optimal ways to administer medical treatment, achievement of increased compliance with therapeutic regimens, management of therapeutic side effects, prolongation of distress-free intervals, and improvement of quality of

life. The neglect and inadequate funding of nursing research have resulted in an underdeveloped knowledge base that must be improved if adequate care is to be provided to the thousands of HIV-infected persons who will be flooding the health care system by the mid-1990s. A report of the NCNR Priority Expert Panel on HIV Infection (1990) identified significant gaps in knowledge about the care of HIV-infected persons:

Care needs across the spectrum of HIV infection;

Development and testing of nursing interventions to alleviate or control symptoms associated with AIDS or its treatment:

Skin breakdown

Nausea, vomiting, inadequate nutrition, loss of appetite, and diarrhea

Psychological, neurological, physiological, and behavioral effects associated with organic brain changes, treatment, or being chronically ill.

NATIONAL ACADEMY OF SCIENCES,
Washington, DC, March 31, 1992.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Labor and Human Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: As the Senate considers legislation to reauthorize the National Institutes of Health, the need for surveys of sexual behavior is again being debated. I would like to bring to your attention the work of the Institute of Medicine, National Academy of Sciences, and National Research Council relating to this issue.

At least five recent reports by committees of health care professionals and public administrators as well as academics have underscored the critical role of such studies, in understanding and dealing with urgent health and social problems. In particular the knowledge gleaned in such surveys is essential in improving programs to prevent further spread of the HIV virus and for decreasing the number of unplanned teenage pregnancies. The current knowledge base on sexual behavior dates largely from the Kinsey studies 1938–48. Survey methods are both sophisticated and sensitive and can secure this information while protecting confidentiality. The costs of not knowing are exceedingly high in the face of the AIDS epidemic. The pertinent conclusions of these reports follow:

Institute of Medicine, Confronting AIDS: Update 1988, National Academy Press, 1988.

"Accurate forecasting of the AIDS epidemic depends in large measure on better knowledge of human sexual and IV drug-abusing behavior. Research in the social sciences, particularly in understanding such behavior, has been inadequate in the past. . . . The committee [for the Oversight of AIDS Activities] adds its endorsement to the importance of the social and behavioral studies needed to understand the epidemic. The committee strongly supports continued resarch efforts to develop better ways to refine predictions about the future course of the AIDS epidemic and to evaluate potential intervention strategies" (pp. 59–60).

Commission on Behavioral and Social Sciences and Education, National Research Council, "AIDS: Sexual Behavior and Intravenous Drug Use," National Academy Press, 1989.

There are substantial gaps in basic knowledge that need to be filled if the country is to contain the spread of the AIDS epidemic. The committee [on AIDS Research and the Behavioral, Social and Statistical Sciences] recommends the Public Health Service support vigorous programs of basic social and behavioral research on human sexual behavior, particularly through such agencies as the National Institutes of Health; the Alcohol, Drug Abuse, and Mental Health Administration; and the Centers for Disease Control. . . . The committee recommends that data be collected to estimate the prevalence of the sexual risktaking behaviors associated with the acquisition and spread of HIV infection in various populations, including those at higher and lower risk" (p. 165).

Commission on Behavioral and Social Sciences and Education, National Research Council, "AIDS: The Second Decade," National Academy Press, 1990.

"Designing and implementing relevant and effective [prevention] programs requires knowledge about the targeted population and the risk-associated behaviors of concern. The committee recommends that the Public Health Service encourage and support behavioral research programs that study the behaviors that HIV infection . . ." (p. 35).

Commission on Behavorial and Social Sciences and Education, National Research Council, "Risking the Future: Adolescent Sexuality, Pregnancy and Childbearing" National Academy Press, 1987.

"Individual data systems vary in their underlying purposes and special emphases as well as their specific characteristics (e.g., definition, sample size, data collection intervals). For these reasons, and because information on sensitive issues requires validation from more than one source, a multidimensional strategy for data collection is needed.

"The panel recommends that data systems that monitor fertility and fertility-related behaviors should be maintained and strengthened. Such data are essential for understanding trends and correlates of adolescent sexual activity, contraceptive use, pregnancy, abortion, and childbearing and as a basis for policy and program development . . ." (p. 13, 14).

Institute of Medicine, "Confronting AIDS: Directions for Public Health, Health Care, and Research," National Academy Press, 1986.

"A major research need is for studies that will improve understanding of all aspects of sexual behavior and drug use and the factors that influence them."

We appreciate the opportunity to submit these views for yours and your colleagues' consideration.

Yours sincerely,

FRANK PRESS,
President.

REPORT OF THE PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC—JUNE 1988

SECTION V: ADDITIONAL RESEARCH NEEDS

Behavioral and Social Science Research

HIV transmission is linked to specific and potentially changeable patterns of behavior. For individuals currently engaging in those behaviors, prevention of transmission depends on implementing effective behavioral change programs which seek to reduce or eliminate exposure to the virus. Research on sexual and drug-abusing behavior must, therefore, be an integral part of all HIV intervention efforts.

The study of human behavior is a complex endeavor which includes a variety of disciplines with numerous methodologies. The need to change individual behavior and to sustain that change will be paramount indefinitely. Given the central role of behavioral and social processes in the HIV epidemic, it is essential that the social and behavioral sciences be given priority in the funding portfolios of the appropriate Public Health Service agencies (Alcohol, Drug Abuse and Mental Health Administration and the National Institutes of Health).

Evaluative components must be built into any intervention program to determine which elements of the program were successful and which were not. The incorporation of evaluation into such programs is often far from ideal, not only for financial reasons. The forging of a relationship between researchers and members of community projects who may be suspicious of the intentions of researchers is difficult at best. Yet evaluation of programs by trained researchers remains the only way to determine program success.

To date, most of the efforts used to stop the spread of HIV have been informational mass communications, such as pamphlets, public service announcements, advertisements in magazines, and—to a limited extent—television commercials. However, some behavioral research indicates that simply providing information may increase awareness about HIV, but does not necessarily lead to change in risk behavior.

Sexual Behavior

Transmission of HIV can occur in any sexual behavior. Research on sexual behavior is particularly relevant for designing and implementing appropriate and effective prevention programs. In addition, research indicates that sexual behavior and attitude vary somewhat as a function of ethnicity and culture. In order to be effective, educational efforts must be sensitive to these differences.

A behavioral model that has been tested in terms of sexual behavior change in response to the HIV epidemic is the Health Belief Model which states that risk reduction depends on knowledge about HIV, a sense of perceived risk, a sense of personal efficacy (i.e., a feeling of having the mechanical and social skills necessary to make changes), and a perception that community norms support HIV risk reduction.

One area of concern in behavior change, illustrated by the study of human sexuality, is relapse prevention. Maintenance of behavior change is often perceived to be more difficult than the original change itself. Among other areas of concern are: the seeming inability of some individuals to enjoy and maintain exclusive sexual relationships, and those individuals whose behaviors may pose an increased risk of HIV transmission—including those diagnosed by sex therapists as sexually compulsive, hyper-sexual, or sexually addicted.

Currently, researchers in the field of adult sexual behavior must continue to refer to data collected by Kinsey over 40 years ago. There is an urgent need to update the information base. Data collected in the future should include not only prevalence of behaviors, but also attitudes and beliefs about sex.

Research areas which need attention are not limited to the behavioral area. Some are interpersonal in nature (e.g., developing assertiveness to resist coercion by partners to engage in high-risk sex and developing social skills to such as that found in the NIMH Centers Program grant mechanism.

The NIMH Centers are multidisciplinary and multi-institutional operations. They support basic, clinical and applied research, and prevention and educational research. All Centers contain information dissemination components, and each maintains contacts with community groups for access to high-risk populations. It is imperative that this

mechanism for funding research be maintained and funding expanded, particularly for behavioral and social sciences research.

Obstacles to Progress

The Commission has identified the following obstacles to progress in the behavioral and social science research areas:

Social behavioral research has been underfunded and undervalued as a tool for developing effective prevention programs.

Better coordination and collaboration are needed among PHS agencies regarding their behavioral research activities.

Significant data are lacking on the sexual behavior patterns of adults and young people of varying ages and cultural backgrounds.

Often, prevention programs are not successful because of insufficient collaboration among service providers and behavioral researchers.

Researchers are not given enough time to evaluate the effectiveness of programs and once a strategy is found effective, the means are lacking for widespread dissemination of that finding.

Parents and educators often disagree on the context and format of school-based sex education. Some fear that sex education will encourage sexual experimentation in adolescents while others believe sex education is essential to prevention.

HIV prevention programs are not sufficiently comprehensive, lacking research-proven behavior modification components in providing options for individuals attempting change.

RECOMMENDATIONS

In response to these obstacles, the commission recommends the following:

4-101—The Department of Health and Human Services, through the Alcohol, Drug Abuse, and Mental Health Administration, the National Institutes of Health, and the Centers for Disease Control should continue and expand the funding of research on adults and adolescents that identify: determinants of risk behavior; models of behavior change interventions (in laboratory, field, and community-based settings); social factors and strategies to affect behavior change; and evaluation and other methodologies.

4-102—All HIV-related research funded by the National Institute of Allergy and Infectious Diseases and the National Institute of Mental Health should be reported to a central information gathering source. In the HIV crisis, data sharing should be the rule.

4-103—Funds should be made available through the National Institute of Mental Health and the Centers for Disease Control to sponsor training programs for graduate and post-graduate HIV researchers in the field of behavioral research.

4-104—Funds should be allocated for training grants for pre- and post-doctoral students in academic settings for research in the disciplines related to HIV research such as psychoimmunology, social psychology, human sexuality (including bisexuality), and behavioral sciences.

4-105—Social and behavioral research in HIV must be long-term, collaborative efforts such as that found in the National Institute of Mental Health Centers Program grant mechanism. It is imperative that this mechanism for funding research be maintained and increased in behavioral and social sciences research and that the Centers continue to play a significant role in behavioral and social research.

4-106—The Department of Health and Human Services, through the National Institutes of Health, the Centers for Disease Control (CDC), and the Alcohol, Drug Abuse and Mental Health Administration should take advantage of work already begun by the National Institute of Child Health and Human Development, in collaboration with CDC, and continue to fund national baseline data collection activities with longitudinal components, that would permit better understanding of sexual practices (including bisexual behavior), attitudes, and risk behaviors of adults *and* adolescents of differing ages and cultural backgrounds in order to assess risks and guide intervention activities. Survey research should include proportionate sampling of ethnic, racial, and cultural groups, and regional variations.

THE PUBLIC AGENDA FOUNDATION

WHO WE ARE

The Public Agenda Foundation is a nonprofit, non-partisan research and education organization whose work has focused on understanding and enhancing the public's role in key public policy issues. It was founded in 1975 by former Secretary of State Cyrus Vance and public opinion analyst Daniel Yankelovich to help average citizens better understand critical policy issues and to help the nation's leaders better understand the public's point of view.

Public Agenda plays a role that is distinctively different from other policy research organizations. It is not an advocacy group dedicated to a specific ideology or social goal. Nor is it a "think tank" concern with the technical analyses of issues for policy makers. Rather, its special purpose is to find more effective ways to present public issues so that citizens may debate the policy alternatives and come to informed judgments about them.

Uniquely combining expertise in public opinion, policy analysis, and citizen education, Public Agenda focuses on issues where there is no consensus for action, either because public understanding is limited or because there is a gap between public and leadership views. In recent years, Public Agenda has worked on such issues as U.S.-Soviet relations, the environment, crime and prison overcrowding and the declining skills of the US work force.

What We Do: Helping Leaders Understand the Public's Views

As a basis for its citizen education work, Public Agenda conducts extensive research into public thinking about critical policy issues, attempting to probe beneath the "top-of-the-head" opinions often captured in polling. Public Agenda explores the reasons why people hold certain views and how they react when given new information or presented with unfamiliar arguments. This kind of in-depth research helps leaders understand more about the public's informed judgment—what people conclude when they have seriously and realistically considered the choices that critical issues present. Public Agenda's research is disseminated to decisionmakers in government, business, labor, foundations, academia, and the media.

What We Do: Helping Citizens Understand Complex Policy Issues

Public Agenda citizen education projects offer people a sense of the country's choices on issues that affect them directly. Video and print materials developed by Public Agenda are based on indepth research into the public's current level of understanding. Their goal is to help people understand alternative policies with their costs, consequences, and tradeoffs clearly spelled out.

Much of Public Agenda's citizen education work is conducted through The Network for Public Debate, a joint project of the Public Agenda and the National Issues Forums. It represents the combined resources of television, radio, newspapers, and community organizations across the country dedicated to helping average citizens learn more about critical issues and the choices for addressing them. Among its present projects are:

Help Wanted, a new citizen education campaign conducted in cooperation with the Business-Higher Education Forum and the Business Roundtable. Its purpose is to help citizens understand the relationship between the health of the nation's economy and the skills of the American work force. It focuses on steps that may need to be taken to strengthen the nation's schools and upgrade the training of citizens now on the job. Help Wanted campaigns were conducted in 1991 in Hartford, Indianapolis, Nashville, and Phoenix. In 1992, campaigns will be conducted nationwide in cooperation with the ABC/PLUS Literacy Project.

Public Summit '88, an information campaign developed jointly with the Center for Foreign Policy Development at Brown University that asked citizens in Baltimore, Nashville, San Antonio, and Seattle to consider four alternative futures for our relations with the Soviets.

School Vote, a citizen information campaign on issues facing the public schools, which has been conducted with local media sponsors in the greater Philadelphia area, Milwaukee, and Denver.

Health Vote, a citizen information campaign on rising health care costs conducted by Public Agenda with local media sponsors in six cities across the country from 1982-1985.

Public Agenda also prepares the National Issues Forums Issue Books used each year in citizen discussions sponsored by this nationwide network of libraries, churches, colleges and schools, union locals and service organizations. These Forums, which are nonpartisan, are held in hundreds of communities to encourage public discussion of public policy questions.

Who We Serve

Public Agenda's work serves the needs of different sectors of American life crucial to national debate. They include—

Political leaders who need to know how people understand an issue and what policies are likely to win broad and stable public support.

Foundations and service agencies that want to understand the public's perspective on the substantive areas in which they work.

Corporations that want to understand citizens' priorities on issues of concern both to them and to the public-at-large.

Media who want to go beyond consciousness raising to promote real dialogue and debate on issues of local and national importance. And above all—

The American public, the vast number of citizens who want to participate—knowledgeably and constructively—in the difficult policy decisions of our time.

How We Do It

In all of its work, Public Agenda draws a distinction between mass opinion—the top-of-the-head reactions people have to an issue no matter how volatile or ill-informed those reactions may be—and public judgment—the informed views people develop about an issue when they have confronted it realistically and thought seriously about the choices it presents.

Public Agenda uses traditional research techniques, Surveys and Focus Groups, to

develop a starting point for its unique methodology, the Citizen Review Panel.

Surveys are most useful in gauging reactions to issues that people are already aware of and knowledgeable about. Using carefully drawn national samples, surveys provide useful generalizations about the population as a whole. But because they must rely on the use of highly structured questionnaires, surveys are often less useful in predicting how people's views change when they confront the choices an issue presents, or when people have an opportunity to consider differing points of view.

Focus Groups, like surveys, are useful in finding out what people's opinions are. Beyond surveys, focus groups, led by trained, impartial moderators, allow the researcher to probe beneath the surface of sentiments, to explore the beliefs, assumptions, or areas of misinformation that are the premises for people's opinions. Focus groups also enable the researcher to elicit more detailed and spontaneous responses from people than surveys, in which responses are necessarily limited by the questionnaire. However, as with any qualitative method, focus groups do not produce results which can be quantified.

Citizen Review Panels are a methodology developed by Public Agenda and distinctive to its work. They are a major innovation in the field of opinion research and can play an important role in helping leaders predict the kind of policy alternatives that are capable of winning broad support among the American public when issues are still emerging before the lines of battle have been drawn by partisan or special interests.

Panels combine the strengths of qualitative research—the ability to probe beyond people's initial thinking and introduce information and ideas that may be unfamiliar—with the most important advantages of quantitative surveys—the ability to obtain meaningful percentages, draw generalizations about the American public as a whole, and look at the special perspectives of particular regions and population subgroups.

I. Introduction and Executive Summary

By the time of the presidential election in the Fall of 1992, nearly 150 thousand Americans will have died of AIDS, Acquired Immune Deficiency Syndrome. An estimated one and one-half million others are believed to be infected with the deadly HIV virus that destroys the body's immune system, leading to death from a wide range of opportunistic infections. Even if the HIV infection rate in the U.S. has leveled off—as most forecasters believe—up to an additional one million Americans will become HIV positive by the end of the decade.

In the 1990s, the U.S. will continue to wage war against the epidemic. But the resources that are committed to that war and the strategies that are employed will, to a considerable extent, depend on public opinion. Public policy can neither be created nor sustained in a political vacuum. To a remarkable extent, what the federal government and other agencies can do to fight the epidemic will be determined or confined within what public opinion analyst Daniel Yankelovich calls "the boundaries of political permission," the parameters within which the governed give their consent.

A Preliminary Analysis of Expert and Public Opinion: In June, 1991, the Public Agenda Foundation, a nonpartisan, not-for-profit research and educational institute headed by Daniel Yankelovich and Cyrus Vance, published a Public and Expert Opinion About the AIDS Epidemic: A Preliminary Analysis." That report, supported by a grant from Aetna Life and Casualty, combined an assessment of existing polling data with a review of the thinking of a diverse group of 30 experts to produce an analytic summary of the status of a dozen emerging or pressing issues related to the epidemic.

Hypotheses About the Views of the General Public: Our results suggest that most Americans do not feel that they are in danger of HIV infection. Therefore, most people do not feel the need to support a number of controversial steps to fight the epidemic. For example, since they believe there is only a remote chance that they will be infected by their doctor or dentist, most Americans do not, our results suggest, strongly favor mandatory HIV-testing for health care providers. However, our results also suggest that public opinion about this issue is like a sleeping giant; if the number of doctor-to-patient cases of HIV infection increases even modestly, the public may rise up and call for—or demand—mandatory HIV testing for all health care providers, in the process brushing aside arguments about privacy, reliability and cost.

On the other hand, our results suggest that most Americans give a top priority to AIDS education and that as long as parents' wishes are taken into account, huge majorities will support using even explicit and controversial AIDS educational material in the public schools, such as the film "AIDS: Just Say No" which recently sparked controversy within the New York City Board of Education. In addition, our results suggest that Americans favor the idea of conducting a nationwide survey of teenagers' sexual behavior and knowledge about AIDS (much like the studies recently proposed by the National Institute of Health but canceled by the Department of Health and Human Services) as long as such information will be used to help shape AIDS educational messages and strategy.

Our results also suggest that the public is virtually oblivious to the transformation of AIDS from an acute to a chronic illness, and of the likely social effects of that transformation. But since Americans thoroughly understand that AIDS cannot be transmitted through casual contact, most will rather easily adapt to the idea of working and interacting with people with AIDS or HIV.

II. Views of a Cross Section of Americans About a Number of Emerging Issues Related to the AIDS Epidemic

Introduction to Part II: In the fall of 1991, the Public Agenda Foundation conducted six cross-sectional focus groups with people who were broadly representative of the public as a whole. In total, Public Agenda interviewed a total of 64 members of the general public in six cities:

New York, September 19, 1991;
Philadelphia, September 25, 1991;
San Antonio, October 30, 1991;
Nashville, October 31, 1991;
Denver, November 13, 1991; and
Los Angeles, November 14, 1991.

Respondents were recruited to match the characteristics of the general population according to various demographic criteria; sex, age, education, and race. Health care providers and other medical professionals were screened out. (For more detail, see Methodology, section V.)

In each group, respondents first filled out a brief questionnaire designed to gauge what they knew about AIDS and HIV transmission. After completing the questionnaire, respondents participated in a discussion led by moderators from Public Agenda.

What to Ask a Cross Section of Americans?

In "Public and Expert Opinion About the AIDS Epidemic: A Preliminary Analysis," the precursor to this study, Public Agenda found that public opinion was neither fully understood nor well documented about a number of emerging issues related to the epidemic. Since these issues will almost certainly become increasingly important in the 1990s, we decided that a major part of our focus in Phase One should be on them. These issues are:

The threat of HIV-transmission to patients from doctors, dentists, and other health care providers, including mandatory HIV-testing of health care providers;

The transformation of AIDS from an acute to a chronic illness, including the fact that as treatments improve and people who are HIV-positive live and work longer, others are increasingly likely to work and interact with them;

Intermediate health care for people with AIDS who need help but do not require hospitalization;

The use of hospices for people with AIDS;

The wisdom of using very explicit AIDS-educational materials (such as the controversial film, "AIDS: Just Say No") with high school students; and

Whether the government should conduct a national survey of teenagers' attitudes and sexual practices (such as the study proposed by the National Institute of Health but canceled by the Department of Health and Human Resources in 1991).

Respondents were split on whether such a film should be shown to junior high school students, with some saying such students are too young and others arguing that if kids are sexually active, they should learn how to protect themselves from HIV. A San Antonio man said, "My daughter is 11 years old. Kids now are starting to be sexually active, even at that age. I don't want to scare her, but they need to know about AIDS."

In Sum: If confirmed, our results show there is widespread public support for showing even explicit and controversial AIDS educational material in the public schools. However, they may be split on the wisdom of showing such a film to junior high school students. Our results also suggest that people will insist on two conditions:

That the film not be pornographic or suggestive; and

That parents be notified in advance and have the opportunity to exempt their children from seeing the film if they so choose.

13. The public would favor conducting a national survey of teenage sexual behavior and knowledge about AIDS similar to the one proposed by the National Institute of Health.

Group members were asked about the wisdom of conducting a large scale national survey of the nation's teenagers to determine exactly what they know about AIDS and the spread of HIV, and also to learn about their own sexual behavior. On the one hand, the moderators said, opponents of the study feel that it is inappropriate for the government to ask 13-year-olds about their sexual behavior; they also say that such a survey would promote sexual activity by appearing to condone it and that asking children about things such as anal and oral sex amounted to exposing them to obscene words and concepts. On the other hand, the moderator said, those in favor argue that such a study has never been done and that, in view of the AIDS epidemic, we need to know exactly how much different groups of teenagers understand and exactly what they are doing so that the schools and government can craft educational messages and anti-AIDS policies that are on target.

The argument that knowledge of teen behavior is necessary in order to target education efforts was understood and widely accepted in the groups. As noted, respondents felt educating the nation's teenagers about AIDS was the best and most important way to fight the epidemic. A woman from Denver said, "Given the fact that there is a high rate of abortion among teens and a high pregnancy rate, we know that teens are being sexually active. So it wouldn't be a waste of the taxpayer's money in order to better educate these teens who are being sexually active."

While some participants expressed concern that such a study might appear to condone sexual activity, most felt that the benefits outweighed the risk. A man from the Denver group said that even if the survey were understood as "condoning sex, it's more important to save lives by finding out how we need to educate teenagers." A man from Nashville said, "We need to know what people are actually thinking at that age, and realize that not everybody is being brought up in the perfect home life."

Most also felt that the use of explicit words would not be a problem. Some parents might find the words offensive," said one man from Los Angeles. "But I don't think it will make the kids want to have sex, because they're probably going to do it anyway." Another man from Los Angeles added, "These words, every teenager knows all those words. And that's any child living in any neighborhood. These words are not a problem."

Among the minority who were opposed to the study, the most popular objection was that there is no need to conduct a study about teenage sexual behavior because we already know they are sexually active and that therefore the money could be better spent. "We know what our children are doing," said a man from San Antonio. "Teenage pregnancy is at an all-time high. This money would be better spent on education." A man from Los Angeles said, "Maybe this money would be better spent on a cure because you can pretty much figure out what teenagers are doing nowadays." Finally, one or two respondents wondered if the government could conduct an accurate survey, given the problems and controversy surrounding the 1990 census.

HEALTHY PEOPLE 2000—NATIONAL HEALTH PROMOTION AND DISEASE PREVENTION OBJECTIVES

FAMILY PLANNING

Introduction

Families are the bedrock of our society. Formally defined as a group of two or more people related by birth, marriage, or adoption and residing together in a household, it is in families that children and adults are nurtured, provided for, and taught about enduring values by word and by example. It is in families that an individual first learns to make choices that promote his or her own physical and emotional health, as well as that of the broader community.

Decisions about forming a family are of critical importance. Decisions made today may have long-term consequences for a couple's ability to carry out plans for a family in the future. Family planning, the process of establishing the preferred number and spacing of children in one's family and selecting the means by which this objective is achieved, pre-supposes the importance of family and the importance of planning. Family planning requires that fundamental questions about an individual's relationship to the lives, health, and well-being of others be addressed.

Successful implementation of family planning choices requires mature, thoughtful decisions accompanied by motivation to carry out those decisions. It requires the exercise of personal responsibility. There are many effective means by which family planning choices can be implemented. Childbearing, adoption, abstinence from sexual activity outside of a monogamous relationship, use of contraceptive methods, natural family planning, and treatment of infertility are all means of reaching desired family planning goals.

Safe and healthful childbearing both contributes to, and is a result of, effective family planning. While miscarriage, stillbirth, and infant mortality outcomes cannot be completely prevented by effective family planning, the frequency of occurrence can be reduced. Thus, preconception counseling and good gynecological, maternal, and child health care are required for effective family planning. Reciprocally effective family planning is a valuable aid to good material and child health because sufficient spacing of pregnancies helps to reduce the incidence of maternal morbidity, low birth weight, and infant mortality.

Adoption provides families for children who need permanent homes. It is one of the means by which infertile couples can implement their plans and desires for children. For individuals who are unprepared to raise their children, it is a means of finding families for them. Services and techniques to correct infertility can also help couples to reach their family planning goals.

Out-of-wedlock pregnancy has become an ever greater problem in this nation as the rate of sexual activity among adolescents has increased and the age of initiation of sexual activity has declined. Furthermore, age at first marriage has increased steadily, while fewer couples with out-of-wedlock pregnancies are marrying. Nearly one quarter of American children aged 6 and younger live below the Federal poverty level, many of them living with a single parent in female headed-families. Children from families in which the father is absent are 9 times more likely to have family incomes of less than $10,000 than those living with both parents. Families with only one parent are more vulnerable to unpredictable or adverse events such as the loss of a job, parental sickness, or difficulty in meeting the needs of severely disabled or troubled children. Further, female-headed families are generally poorer than two-parent families because they lack a second wage earner, because women's wages are often lower than men's, and because women who become parents at a very young age frequently lack education and job skills.

Beyond economic considerations, there is evidence that child health is affected by the marital status of his or her parents. For example, in 1983, for both whites and blacks, unmarried motherhood was associated with higher infant mortality. Among births to married white women, the infant mortality rate was 7.8 per 1,000 live births; among unmarried white women the rate was 13.1 per 1,000 live births. Among births to married black women the infant mortality rate was 14.1 per 1,000 live births, while unmarried black women experienced a rate of 19.6 infant deaths per 1,000 live births. Married women are more likely than unmarried women to receive prenatal care, even when race and age are taken into account. Other studies point to a relationship between broken families and child health. For example, a recent study of the health histories of 6,000 children found that children of divorced or separated parents have a one-third greater risk of developing health problems, such as pneumonia, tonsillitis, and repeated ear infections, as compared to children from intact families.

In addition to fostering family formation, efforts must also be made to strengthen the family's ability to educate and transmit strong values surrounding sexuality to children in the midst of a media culture that portrays and often condones casual sexual involvement. Postponement of sexual activity until an individual is in a mutually monogamous relationship is the most certain approach to prevention of a host of sexually transmitted diseases and may also help reduce rates of unintended pregnancy.

Various methods are available to prevent pregnancy among sexually active people. These methods include barrier and hormonal methods of contraception, natural family planning methods, and sterilization. These methods vary in effectiveness in preventing pregnancy and protecting against sexually transmitted disease, in health risks, and in compatibility with an individual's or couple's moral or religious beliefs. Choice of family planning methods is important not only in terms of relative effectiveness in preventing or spacing pregnancy, but also in terms of general health. Contraceptive methods may carry adverse health risks. On the other hand, some methods, particularly barrier methods, confer some measure of protection against sexually transmitted diseases. Natural family planning may be preferred by those who find other forms of contraception unacceptable for philosophical, health, or religious reasons.

The objectives presented here focus on reducing pregnancies among teenagers younger than age 18 and unintended pregnancies among all women. In 1988, American women reported that 56 percent of their pregnancies (adjusted for underreporting of abortion) in the last 5 years had been "unintended," that is either occurring too soon or unwanted. Studies suggest that unintended pregnancy may bring special risks. In 1982, among black women whose births were wanted at the time of pregnancy, 10.2 percent of births were of low birth weight; among black women whose pregnancies were unintended, the low birth weight rate was 13.6, a 33 percent difference. The Institute of Medicine, in its report "Reducing Low Birthweight," recommends that improved "family planning services [become] an integral part of overall stategies to reduce the incidence of low birth weight in infants."

If family planning—serious consideration of family goals, careful selection of a family planning strategy, and conscientious adherence to that strategy—is put into general practice, the rates of unwanted and mistimed pregnancy should fall appreciably. Unwanted and unintended pregnancy has implications for abortions reported to the Centers for Disease Control in 1987 was approximately 1,353,000. The United States abortion rate among teenagers aged 15 through 19 in 1983 was considerably higher than for many other countries for which data are available.

Research Needs

More information is needed on the characteristics of people who adopt children and who chose adoption as a means of resolving unintended pregnancy. This information would be very useful in improving the design of programs intended to increase adoption.

American women have a comparatively low level of effective contraceptive use and are more likely than their counterparts in other developed countries not to use any

method at all. Additional basic research should be conducted to assess nonuse, incorrect use, and effective methods for increasing correct contraceptive use.

The determinants and consequences of early sexual intercourse are poorly understood. Additional research is needed to better understand early initiation, its consequences, and how it might be prevented.

Existing contraceptive methods are often unacceptable to men and women because of difficulty or discomfort in use, expense, or undesirable side-effects. Improved contraceptive methods are needed for men and women. Research should focus on developing methods that are easier to use, that have fewer side effects, and that are less expensive.

Related Objectives From Other Priority Areas

Tobacco

3.4 Cigarette smoking.

3.7 Smoking cessation during pregnancy.

Educational and Community-Based Programs

8.4 Quality school health education.

8.9 Family discussion of health-related issues.

8.10 Community health promotion programs.

Occupational Safety and Health

10.8 Occupational lead exposure.

Evironmental Health

11.11 Home testing for lead-based paint.

Maternal and Infant Health

14.1 Infant mortality.

14.2 Fetal deaths.

14.4 Fetal alcohol syndrome.

14.5 Low birth weight.

14.10 Alcohol, tobacco, and drug use during pregnancy.

14.12 Age-appropriate preconception counseling by clinicians.

HIV Infection

18.4 Condom use.

Sexually Transmitted Diseases

19.1 Gonorrhea.

19.2 Chlamydia.

19.3 Syphilis.

19.4 Congenital syphilis.

19.6 Pelvic inflammatory disease.

19.8 Repeat gonorrhea infection.

19.12 Sexually transmitted disease education in schools.

19.13 Correct management of sexually transmitted disease cases.

19.14 Counseling to prevent sexually transmitted diseases.

19.15 Partner notification of exposure to sexually transmitted disease.

Clinical Preventive Services

21.2 Receipt of recommended services.

21.6 Provision of recommended services by clinicians.

Surveillance and Data Systems

22.4 Gaps in health data.

SENSITIVITY, CONFIDENTIALITY, AND INFORMED CONSENT IN SEXUAL BEHAVIOR RESEARCH

SENSITIVITY

Many people are uncomfortable supporting research on sexual behavior because, by its very nature, such research requires discussion of topics that are highly personal. Explicit questions about private behaviors must be asked, and information must be obtained that could embarrass survey participants if their answers were publicly revealed. These concerns are not unique to sexual behavior research; in fact experience tells us that people are usually more comfortable revealing information about sexual behavior than they are information about their incomes (which virtually every federal survey requests). Survey specialists and scientists follow strict procedures to ensure that confidentiality of responses is maintained. In addition, considerable effort goes into developing questions and data collection techniques to minimize any discomfort the respondents may have in answering questions, and thereby ensure the quality of data collected.

Several survey techniques can be used to ensure data quality and respondent ease in interviews about sensitive topics. First, questions must be designed to be universally understood by the study population as well as be neutral in their tone. Researchers often begin their design of questions by conducting focus groups and open-ended interviews with individuals from their study population. From these, they learn what terms are used in the population to refer to the subject matter of the study, and how well technical terms may be understood. They also learn about the acceptability of different types of language in the study population. This information provides a basis for draft questionnaires which then can be tested with a different sample of the population: in these tests, a respondent who had completed a questionnaire would be debriefed about how well the questionnaire had worked to elicit the needed information. The questions that result from this process reflect the best possible compromise between the need for clarity and the need to minimize sensitivity.

Several interviewing techniques have been found useful in improving data quality by reducing the sensitivity of the interview setting. One of these, widely used in survey research, is the use of a card to depict responses that people may be reluctant to state aloud. The card allows respondents to answer with the letter or number for their response. A second technique is the use of a self-administered questionnaire. With this technique, answers are not known to the interviewer, any many respondents feel freer to respond in this way. New techniques of self-administering questions are now being developed using personal computers, and these are expected to provide even more privacy for respondents answering sensitive questions.

CONFIDENTIALITY

In every step of survey design, measures are taken to protect the confidentiality of responses:

Questionnaires are designed so that any identifying information (for example, names and addresses needed to locate the respondent) is separated from the information given in the interview.

Interviews are required to be conducted in private.

Questionnaires and identifying materials are separated before being mailed to the central processing office. All staff involved in conducting a survey sign a pledge of confidentiality. While computer processing is underway, completed questionnaires are kept in locked cabinets. The resulting data tapes contain no identifying information; where future research steps require a link to identifiers, a number is assigned and the key to these numbers kept under lock and key.

A recently expanded federal program enables investigators to further protect confidentiality by obtaining a "certificate of confidentiality" protecting the data from legal subpoena.

INFORMED CONSENT

No individual participates in a survey without first giving informed consent:

"Informed" means that the respondent must be given information about the purposes and nature of the study, who is conducting it, and information about the questions to be asked.

Often, signed consent is required; in some cases verbal consent is accepted.

When the eligible respondent is under age 18, informed parental consent is required as well as the young person's own informed consent.

Institutional Review Boards at universities and private research organizations carefully review each project to ensure that requirements for informed consent, privacy and confidentiality are met. The creation and performance of these boards is regularly monitored by federal agencies that support research.

In all these ways, it can be seen that procedures are in place to permit the sensitive and responsible treatment of survey data on sexual behavior. Our effectiveness in responding to public health challenges depends on the ability to collect these data, and every effort is made to do so in the most reasonable and meaningful ways.

THE NATIONAL ADVISORY COUNCIL ON AGING,
Bethesda, MD, October 24, 1991.

Hon. LOUIS W. SULLIVAN, M.D.,
Secretary of Health and Human Services, Washington, DC.

DEAR MR. SECRETARY: At our recent meeting of the National Advisory Council on Aging, the non-federal members of the Council expressed concern over the suspension of grant HD26934 which was awarded to the University of North Carolina in May of 1991.

It is our understanding that the scientific merit of the project was judged to be outstanding by the NIH scientific review panel. We also understand that the research was judged to be of national priority by the NICHD Advisory Council and NIH officials. Consistent with NIH procedures, an award was made based on these time-tested criteria.

We are disturbed about the precedent of suspending a grant after it has been reviewed, judged meritorious, and awarded funds. If there are research areas that are not to be supported by NIH, these decisions should be made prior to the scientific review of applications and the award of research grants.

The NIH review process has served health research well over the years. Therefore, the National Advisory Council on Aging unanimously urges you to reconsider this decision.

Sincerely,

THE NATIONAL ADVISORY COUNCIL ON AGING.

Mr. KENNEDY. I had heard that the Senator from New York, Senator MOYNIHAN, was on his way over. I would like to verify that. Then I would be prepared to yield.

Mr. SIMON. Mr. President, I will take 1 minute here.

I will point out that under my amendment, what we have is not only what is in the bill, is if they go ahead, and if the Secretary has to have an ethical review board to go over this, appointed by Secretary Sullivan, under my amendment the Secretary has to believe that it will assist in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency

virus, or the incidence of any other infectious disease, or in improving reproductive health or other conditions of health.

So this is a judgment call to be made by the Secretary of HHS. I am willing to let the Secretary make that judgment call.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I feel obliged to say again what the facts are, not somebody's interpretation of them. Not only does title II require the Secretary to convene such an advisory board before he can withhold funding, but he must fund a project, if a majority of the so-called advisory board approves a project. Since at least one-third to one-half of the board would have to be the same bureaucratic researchers who are pushing the projects, I doubt anybody can conclude that a majority on the board will not approve the projects despite, and over, Secretary Sullivan's objection. In any case, the Secretary has already said, "I do not like them; they are not in the public's interest."

Mr. President, you cannot obscure the truth. I say again, how can it be called just an advisory board when the Secretary is compelled by the combined working of the Simon amendment and the underlying bill to abide by whatever this so-called board decides? I thought we put the Secretary of HHS there to make these decisions. The President charged him with that responsibility.

Cutting through all of the obfuscation—I am sorry there has been so much of it, Mr. President—Section 1010 and the Simon amendment both mandate that Secretary Sullivan fund these two sex surveys immediately once this bill is enacted into law.

Mr. President, at this point I would be glad to yield my time back—provided no other provocative statement is made to which I would like to respond.

Mr. SIMON. Will my colleague yield for a question? I will try not to make a provocative statement.

Mr. HELMS. Sure.

Mr. SIMON. My amendment gives to the Secretary of HHS the judgment call, and he is to approve this only if he believes that this survey—if you will read my amendment—will assist in reducing the incidence of sexually transmitted diseases, incidence of infection of human immunodeficiency virus, or the incidence of any other infectious disease, or in improving reproductive health or other conditions of health: that is a judgment call to be made by the Secretary of HHS under this. This is not a mandate. Does the Senator from North Carolina understand that from my amendment?

Mr. HELMS. I beg to differ with my friend. When you couple the Senator's amendment with the underlying provision in the bill, there is nothing but a mandatory requirement that the Secretary of HHS abide by what this so-called advisory board stipulates. We can go up and down and chase that rabbit all we want to, but this is an action taking away the final authority of the Secretary of HHS on this issue. The Justice Department agrees with me, and Secretary Sullivan agrees with me.

Mr. KENNEDY. Mr. President, we are prepared to yield back the remainder of our time.

Mr. HELMS. In that case, I will yield back my time.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on the Helms amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Have the yeas and nays been ordered on the Simon amendment?

The PRESIDING OFFICER. They have not been.

Mr. KENNEDY. I ask for the yeas and nays on the Simon amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I am going to ask for a quorum call so that Senator DOLE can come to the floor. I think he wants to make a few comments.

Mr. HATCH. If the Senator will withhold, we have a couple of people on this side who would like to make closing remarks. Senator GRASSLEY, Senator SIMPSON and, of course, Senator DOLE, want to make some remarks; and then Senator KENNEDY and myself would like to make a few closing remarks.

The PRESIDING OFFICER. The Chair informs the Senator from Utah that, though there has been an offer made to relinquish the time, the Senators can use the remaining time if it is stated that they want to reserve it for their use.

Mr. HATCH. We understand that. What we are hoping is that we can all put our statements in the RECORD, except for Senator DOLE, and we can have three back-to-back votes. The first will be 15 minutes, and last two will be 10 minutes. And some of the Senators who need to make their appointments can do so.

The PRESIDING OFFICER. For the understanding of the Chair, will the request be made?

Mr. KENNEDY. Mr. President, I ask unanimous-consent to be able to proceed for 2 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. For the information of the membership, Mr. President, very shortly, in the next few minutes, under the unanimous-consent agreement, there will be an up-or-down vote on the Simon amendment, followed by an up-or-down vote on the Helms amendment. Under the previous agreement, there are no other amendments in order, but there has been no time set for final passage.

We would hope, as the floor managers, for the convenience of the membership—we are going to be here regardless—that we could speak following a vote on final passage; that would be our desire.

We are not asking unanimous consent for that at this particular time. But we would intend at least to pursue that as an objective during the votes on these first two amendments. I am authorized by the majority leader to ask unanimous consent that when we vote on the amendments, the rollcall be 15 minutes on the first amendment and 10 minutes on the second amendment, and we will try to let the membership know whether we can move right to final passage, or whether there will be intervening speeches. That is, at least, the desire of the floor managers as to how we would like to proceed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, it is my understanding that the distinguished minority leader would like to say a few words before either of these votes occur.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, while we await the minority leader, I will make some general comments to the general NIH bill.

The PRESIDING OFFICER. The Senator has roughly 4 minutes left.

The Senator from Utah.

Mr. HATCH. Mr. President, I congratulate the distinguished Senator from Massachusetts for the work he has done on this bill, and I have a lot of respect for him and the efforts that he puts forth.

We do have major differences on this bill. There are major critical NIH issues unaddressed in this bill.

Today, the Senate will vote on final passage of H.R. 2507, the National Institutes of Health Reauthorization Act of 1992.

Two days ago we spent considerable time debating the issue of fetal tissue research. My colleagues may be relieved that I do not plan to rehash this discussion extensively today, but I do have a few points that I wish to make concerning fetal tissue research.

Simply stated, my amendment attempted to loosen, without cutting, the tightening Gordian Knot between the science of fetal tissue research and the difficult politics surrounding these difficult ethical issues.

Mr. President, in the April 20, 1989 volume of the New England Journal of Medicine, a group of authors from the Stanford University Medical Center, Committee on Ethics, presented a paper entitled "The Ethical Use of Human Fetal Tissue." The authors stated:

> Fetal tissue differs from the tissue of adult cadavers, however, because it often becomes available as the result of a mother's decision, implemented by a physician's actions, to end her pregnancy. This element of volition introduces a new ethical problem * * *. If tissue from spontaneous abortions could reasonably satisfy medical demands in both quantity and quality, it would be preferable to avoid the ethical problems of using tissue from induced abortions.

It was precisely this preference that my amendment sought to accommodate. As we consider the matter of fetal tissue research in our democratic society, it is important that, whenever practicable, we proceed in a spirit of mutual respect and compromise.

I believe that my alternative was reasonable. It would have allowed valuable science to go forward in a fashion that achieved a proper balance between promising research opportunities and the ethical concerns of a large segment of the public. The honest, deeply felt reservations about induced abortions as a source of fetal tissue should not be dismissed casually in this debate.

Mr. President, I lost the vote 2 days ago, and I am sure that final passage is all but a formality today. I just want to thank my colleagues who voted for my amendment for looking beyond the question of moratorium or no moratorium. The issue is more complex than that, and there is a lot at stake. If this bill, in its current form, dies, this important research dies too.

We in this Chamber spend hours talking and talking and worrying out loud about our international competitiveness. Every working day, those at the NIH and its grantees do something about it by doing the breakthrough research that helps make this country the world leader in biotechnology.

But, while I absolutely support the NIH, and have supported it during my tenure as a Member of this body and as a member of the Labor and Human Resources Committee, I must call the Senate's attention to other issues in this legislation. In my view, long stretches of the NIH reauthorization bill read like yesterday's newspaper and read, in toto, the bill seems somewhat disjointed and almost certainly not up to the task of materially aiding NIH to prepare itself for the challenges of the 21st century. If we set aside once again the question of fetal tissue research, I believe that the bill unwisely micromanages the NIH by codifying activities mostly underway.

I cannot help but find irony in the fact that the bill supposedly liberates fetal tissue research through a title named "Research Freedom" while, at the same time, imposes binding congressional research priorities on this science agency. This erodes commonly accepted executive branch authority as well as research freedom.

To buttress this assessment, I would like to make a number of observations about where I believe the bill falls short of the mark:

First, there are major critical NIH-related issues conspicuously unaddressed in this supposed omnibus reauthorization bill.

Ideally, a major reauthorization bill would address major current and emergent issues. Chief among the set of serious NIH-related problems this bill studiously avoids are: The already overburdened machinery to deal with the allegations of science fraud; the problems associated with improper indirect costs charges made by NIH grantees; the critical role of evolving NIH technology transfer policies; the question of how and to what extent to link NIH biomedical research to treatment outcomes and effectiveness research and the larger issue of controlling cost growth in our health care system; the absence of any provisions relating to research on the newest emerging public health scourge—drug resistant strains of tuberculosis; and finally, lack of recognition for the major NIH-wide strategic planning exercise that is currently being undertaken. This effort has the active participation of the science community and the public in order to more adequately prepare the NIH to lead the way for the anticipated biological revolution of the 21st century. I trust that this exercise will provide more vision than H.R. 2507.

Second, there exists an overriding tone of micromanagement that runs throughout the bill.

A basic strength of the NIH research program lies in the decentralized decisionmaking process in which qualified panels of scientific experts select which projects to fund solely on the basis of scientific merit.

Historically, the great bulk—about 80 percent—of NIH-assisted research takes place through the highly competitive extramural research program primarily through investigator-designed and investigator-initiated research projects.

H.R. 2507, with its plethora of new program mandates and new administrative structures, unwisely substitutes the political judgment of Congress for the scientific judgment of the very capable scientist-administrators at NIH.

To cite just one small but telling example of this incessant type of micromanagement, consider the direction contained in section 1006 of the bill requiring the insertion of the phrase "including tropical diseases," into the purpose clause of the National Institute of Allergy and Infectious Diseases. The question is, why is this change necessary for an institute that has had longstanding tropical disease research activities? I suspect that somewhere, someplace, there is a lobbyist that knows the real story behind this change.

Each year the NIH rates at the top of the list of best managed Federal institutions. We should be mindful of this managerial expertise and respectful of the unique relationship between the NIH and the larger biomedical research community. Accordingly, we should consider with deference the concerns raised by the NIH on these types of managerial issues.

Third, the bill creates a number of permanent administrative structures whose value, if any, is largely political.

H.R. 2507 sets in stone administrative structures of dubious practical value. For example, the bill codifies several initiatives already well underway such as an interagency program for trauma research, contraception and infertility research centers, child health research centers, diabetes eye care centers, pediatric cardiovascular centers, and elevating the National Center for Nursing Research to institute status.

Moreover, the bill requires NIH to undertake activities and creates several advisory committees that are costly or otherwise ill-advised. For example, title III of the bill would require the establishment of clinical research subcommittees under the aegis of the advisory council of the National Institute of General Medical Science [NIGMS]. Due to its longstanding focus on research at the very frontiers of biology at the cellular level, NIGMS funds very little clinical research. Assigning clinical research activities to this Institute displays a misunderstanding of the historical role of NIGMS in basic biochemical research and would divert resources away from basic research.

I have no doubt that all of my colleagues in the Senate would agree that more research, across the board, needs to be conducted into the particular health problems confronting women. Recognizing this, in September 1990, the Office of Research on Women's Health [ORWH] was established formally within the Office of the NIH Director.

While H.R. 2507 would take the step of codifying this office and legislatively specifying responsibilities which are for the most part already underway or under development, in my view, the personal leadership and commitment on this issue exhibited by Director Healy and other key figures at NIH including Dr. Ruth Kirschstein, Director of the National Institute of General

Medical Science, will be critical to the success of this program. It does not take an act of Congress.

I have found that more often it is the diligence of people, not an organization chart, that makes a program successful.

Fourth, the ethics board is bad law and poor policy.

In their haste to overturn the current moratorium on human fetal tissue transplantation, those favoring the bill would enact an ethics advisory board that could override the judgment and authority of the Secretary of Health and Human Services in cases in which the Secretary chose to disapprove peer reviewed scientific research proposals on ethical grounds.

The Department of Justice has found that this provision raises serious constitutional questions pertaining to the appointments clause.

The Justice Department has found:

Proposed new section 492(b)(1) * * * would prevent the Secretary from withholding funding for research on ethical grounds unless he convenes an ethics advisory board to study the ethical implications of the research and unless the majority of the ethics board recommends that he withhold the funds on ethical grounds. Because the members of the ethics advisory board would exercise "significant authority pursuant to the laws of the United States * * * they would be officers of the United States." Consistent with this status, the board members would be appointed by the Secretary * * *. As inferior officers under the direction of the Secretary, the work and the preliminary report would be subject to revision by the Secretary.

Under this bill the "advice" of an advisory board becomes binding. Some advisory board this is. This is not an advisory committee, this is an oxymoron. It turns the normal relationship between outside advisers and the responsible public officials upside down.

In conclusion, I believe that with all of these flaws, this bill—in its current form—when presented to the President will be vetoed. I regret that prospect; however, we cannot continue to pass legislation—bound up in the cloak of commonly held legislative goals—that contains such unacceptable provisions. I strongly believe that this bill falls far short of the mark of preparing the NIH for the next century.

I also say there is an overriding tone on micromanagement which runs throughout this bill. I object to that. I think we do too much micromanagement here in the Congress of the United States. It creates a value, if any, which is largely political, and I am concerned about that as well.

The ethics board is bad law; it is poor policy, and there are other aspects that I could take time to go into right now.

But I would just say in conclusion, Mr. President, I believe that with all of these flaws, this bill in its current form, when presented to the President, will be vetoed. I regret that prospect. However, we cannot continue to pass legislation bound up in the cloak of commonly held legislative goals that contains such unacceptable provisions as this one does.

So I strongly believe this bill falls far short of the mark in preparing NIH for the next century. Having said so, I understand it will pass. And we will see what happens after that.

Mr. President, I yield the floor to the distinguished Republican leader.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. First, I thank the managers for earlier accepting the amendment I suggested.

Mr. President, this year approximately 132,000 men will be confronted by the same diagnosis I had to face a few months ago: Cancer of the prostate. It is the same diagnosis that Senator TED STEVENS, Senator JESSE HELMS, and Senator ALAN CRANSTON also had to face. And as our population ages, more men will learn that they, too, are among the 1 in 11 men that has contracted the disease.

Because prostate cancer often presents no symptoms until its advanced stages, at least 40 percent of men with prostate cancer have metastatic disease—disease that spreads outside the prostate gland—disease that will not be as easy to treat—disease that can claim lives.

Prostate cancer is the most common malignancy in American men and the second biggest cancer killer, second only to lung cancer. It claims the lives of about 34,000 men each year in the United States.

But, despite these numbers, critical information, such as the causes of prostate cancer, is still not known.

Critical information on the possibility of preventing prostate cancer is still not known.

Critical information, such as the role of family history with prostate cancer, is still not known.

Critical information, such as the effects of lifestyle and behavior, is still not known.

And, Mr. President, we still do not have definitive information about the beneficial effects of early treatment.

I hear it all the time—Senator you did not need surgery—you would have died with prostate cancer, not of it. But, how do you explain that to the 34,000 men who die of it every year. Common sense would say, find it early and treat it early. But, medical science cannot say this yet, because there has not been enough research.

Contrary to popular belief, prostate cancer is not an old man's disease. Although it is much more common with age, men even in their thirties can have prostate cancer—and often not even know it. And few men living a normal lifespan of about 74 years will be free of some sort of prostate problem.

But, unlike breast cancer, this very common disease has largely gone unmentioned by those who have received the unpleasant news.

By contrast, thanks to the courage and candor of Betty Ford and the many other women who followed her bold lead, most American women are aware of the risk of breast cancer and can take preventive action to save their lives. I am sorry to say that this level of awareness is not the case for men.

Now, I am not here to pit one disease against another, but look at one important fact. Prostate cancer claims 34,000 lives every year, yet the U.S. Government devotes only $28 million to prostate cancer research. Compare that to the almost $2 billion we spend—and should be spending—to research AIDS, a disease which claims about the same number of lives, and you know it is time to devote more resources to the battle against prostate cancer.

Mr. President, the amendment that Senators STEVENS, HELMS, CRANSTON, and I have incorporated into the committee amendment today could increase funding for prostate cancer to the National Cancer Institute from $28 million to $100 million and could provide an additional $20 million for prostate cancer research to the Centers for Disease Control. It will expand research efforts and increase outreach programs for greater public education so that we may learn more about the causes, prevention, detection, and treatment of prostate cancer.

I am hopeful that through this action more information will become available to the health providers, to the victims, and to the potential victims of prostate cancer so that instead of waiting for tragedy to strike, and for lives to be lost, men will know that prostate cancer need not be an inevitable part of life.

Mr. President, I appreciate, and I know my colleagues, Senator CRANSTON, Senator HELMS, and Senator STEVENS, and others, who may be facing this decision not just in the U.S. Senate but anywhere in the United States of America will thank and congratulate the managers of the bill for accepting this amendment.

I ask unanimous consent to print in the RECORD my amendment.

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

At the appropriate place in title I, insert the following new sections:

SEC. . PROSTATE CANCER RESEARCH.

(a) FINDINGS.—Congress finds that—

(1) one in every 11 men will develop prostate cancer;

(2) it is estimated that 34,000 deaths will occur in 1992 from prostate cancer, the second leading cause of cancer deaths in men;

(3) an estimated 132,000 new cases of prostate cancer will occur in 1992;

(4) current Federal research efforts in prostate cancer totaled $28,000 in fiscal year 1992;

(5) additional research concerning prostate cancer is urgently needed; and

(6) there is a need to accelerate the investigation into the cause, treatment and prevention of prostate cancer.

(b) EXPANDED RESEARCH.—Subpart 1 of part C of title IV (42 U.S.C. 285 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 417. EXPANDED PROSTATE CANCER RESEARCH.

11 "(a) IN GENERAL.—The Secretary shall undertake to expand and intensify prostate cancer research efforts through appropriate activities, including—

"(1) the conduct of basic research concerning the etiology and causes of prostate cancer;

"(2) the conduct of clinical research and related activities into the causes, prevention, detection and treatment of prostate cancer;

"(3) the implementation of prevention and control and early detection programs with respect to prostate cancer in accordance with section 412, particularly as it relates to intensifying research on the role of PSA for the screening and early detection of prostate cancer;

"(4) the implementation of information and education programs with respect to prostate cancer in accordance with section 413;

"(5) the implementation of research and demonstration programs with respect to prostate cancer in accordance with section 414, including the development and operation of prostate cancer research centers to bring together basic and clinical, biomedical and behavioral scientists to conduct basic and clinical, epidemiologic, psychosocial, prevention and treatment research and related activities; and

"(6) the establishment of an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of cancer research efforts.

(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, in addition to the amounts authorized be appropriated for the National Cancer Institute under section 301 and 408, there are authorized to be appropriated $72,000,000 for fiscal year 1993, and such sums as are necessary for each of the fiscal years 1994 through 1997.".

SEC. . PROSTATE CANCER PREVENTION.

(a) FINDINGS.—Congress finds that—

(1) prostate cancer is the second most common cause of death from cancer among men;

(2) early detection can prevent death from prostate cancer;

(3) routine digital examination is one method for detecting potentially malignant prostatic nodules, and should be performed annually on all men over 40 years of age;

(4) advances in the early detection of prostate cancer, such as tests for prostate-specific antigens in the blood and non-invasive imaging techniques, may prove to be cost-effective screening techniques;

(5) education is needed to improve the application of proven cancer screening techniques; and

(6) increased efforts are needed to ensure that cost-effective methods for early prostate cancer detection are made available to men at risk.

(b) MORTALITY PREVENTION.—Part B of title III is amended by inserting after section 317A (42 U.S.C. 247b-1) the following new section:

"SEC. 317B. PROSTATE CANCER MORTALITY PREVENTION.

"(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, may award grants to States and local health departments for the purpose of enabling such States and departments to carry out programs to—

"(1) screen men for prostate cancer as a preventive health measure;

"(2) provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

"(3) develop and disseminate public information and education programs of the detection and control of prostate cancer;

"(4) improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of prostate cancer;

"(5) establish mechanisms through which the States can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

"(6) evaluate activities conducted under paragraph (1) through (5) through appropriate surveillance or program monitoring activities.

"(b) GRANT APPLICATIONS.—

"(1) REQUIREMENT.—No grant may be awarded under subsection (a), unless an application for such grant has been submitted to, and approved by, the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary shall prescribe, and shall include—

"(A) a complete description of the program which is to be provided by or through the applicant;

"(B) assurances satisfactory to the Secretary that the program to be provided under the grant will include education programs designed to communicate to men, and local health officials the significance of the early detection of prostate cancer;

"(C) assurances satisfactory to the Secretary that the applicant will report, on a quarterly basis, the number of men screened for prostate cancer and the number of men who were found to have prostate cancer, the number and type of medical referral made with respect to such men, the outcome of such referrals, and other information to measure program effectiveness as required under paragraph (2);

"(D) assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require; and

"(E) such other information as the Secretary may prescribe.

"(2) TECHNICAL ASSISTANCE.—The Secretary may prove training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to this section.

"(c) MAINTENANCE OF EFFORT.—No grant may be awarded under subsection (a) unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made, and will in no event supplant such State, local, and other non-Federal funds.

"(d) METHOD AND AMOUNT OF PAYMENT.—The Secretary shall determine the amount of a grant made under subsection (a). Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

"(e) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary, at the request of a recipient of a grant under subsection (a), may reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee; when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which any such grant is so reduced. Such amount shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

"(f) RECORDS.—Each recipient of a grant under subsection (a) shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(g) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a), that are pertinent to such grant.

"(h) INDIAN TRIBES.—For purposes of this section, the term 'units of local government' includes Indian tribes.

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section not more than $20,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) SET-ASIDE FOR TECHNICAL ASSISTANCE.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out activities under this section at the national level.".

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that immediately following the next two votes the committee substitute be deemed agreed to as amended, that the bill be read for the third time, and the Senate proceed on final passage of the bill.

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

Mr. MITCHELL. Mr. President, I ask for the yeas and nays on final passage of the bill.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the first vote be limited to 15 minutes with the two votes that follow limited to 10 minutes each.

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

Mr. MITCHELL. Mr. President, I rise to speak in support of this legislation, the National Institutes of Health Reauthorization Act of 1991.

This legislation revises and reauthorizes many important programs of the National institutes of Health. The research freedom provisions of this bill remove a barrier to the advancement of science and medicine that has been in place since 1988.

The Bush administration's moratorium on Federal funding for human fetal tissue transplant research has stigmatized this field of research, forcing many scientists to focus solely on animal fetal studies, to seek limited private funds to continue their work, or to abandon their research altogether.

This has effectively halted fetal tissue transplant research in the United States. It has halted a field of promising research that could potentially lead to therapeutic treatments and possibly cures for millions of Americans suffering from incurable diseases and disabilities. These conditions include Parkinson's disease, diabetes, Alzheimer's, Huntington's, leukemia, epilepsy, AIDS, multiple sclerosis, and others.

The human cost of this moratorium imposed by the Bush administration is incalculable. For as long as this moratorium on funding continues, the discovery of potential treatment and cures is delayed and the suffering of millions of Americans prolonged.

Fetal tissue research has already made substantial contributions to medicine in the areas of prevention, diagnosis, and treatment. It was research with fetal kidney tissue that led to the discovery and development of the polio vaccine in the 1950's. The vaccine for German measles and the treatment for RH factor, the condition that results when the mother and fetus have incompatible blood types also emerged from fetal tissue research.

Further, more advances in prenatal diagnoses of genetic defects have evolved due to fetal tissue research. All of these advances in medicine and in the health of the members of our society would not have occurred, at least not when they did, if a moratorium on fetal tissue research had been in place. And further advancements in medicine and in the health of the American people should not be delayed by this unwise and unwarranted moratorium.

The promise of fetal tissue transplant research has been proven. Our society has learned a great deal from the limited human fetal tissue transplant research that has taken place in this country and overseas. We have learned that fetal tissue has the unique characteristics of adapting and growing rapidly. We have learned that fetal tissue will thrive in virtually any recipient with minimal risk of rejection. We learned that adult brain tissue can be regrown with fetal tissue, and even learned that progression of disease can be retarded and possibly reversed and genetic disorders possibly corrected.

But most importantly, we have learned that there are many more potential medicinal benefits for fetal tissue yet to be discovered. The research must continue and must receive Federal support.

This research, a promising avenue for treatment and for the many incurable diseases and disabilities from which millions of Americans suffer, must no longer be suppressed.

I urge all of my colleagues to support the provisions of this legislation and remove the administration's moratorium on Federal funding for fetal tissue transplant research.

Mr. DURENBERGER. Mr. President, I rise to support the amendment offered by the distinguished Senator from Illinois [Mr. SIMON] to H.R. 2507, the reauthorization of the National Institutes of Health [NIH], and to oppose the amendment offered by the distinguished Senator from North Carolina [Mr. HELMS].

Mr. President, these amendments focus on surveys authorized by NIH that are designed to compile information and statistics on sexual behavior among adolescents and adults. The Senator from North Carolina has argued that these type of surveys are a waste of taxpayers' money. And he has asserted that the specific questions asked in these surveys are immoral and may inappropriately encourage premarital sex.

Mr. President, the tragic fact is that we have an epidemic in our community that is related to sexual activities among our young people and among adults. Sexually transmitted diseases [STD's] are among the most important public health problems in the United States. Approximately 12 million people acquire a sexually transmitted infection each year; two-thirds of those cases occur in people under 25 years of age.

A million people are currently infected with HIV, which we all know is ultimately fatal. Health and Human Services Secretary Louis Sullivan recently announced that AIDS is spreading to small towns and a large share of the heterosexual population. The AIDS epidemic has become the equivalent of the 12th century bubonic plague, striking death in every city and town throughout the Nation.

We cannot afford to ignore this problem and cannot ignore the fundamental fact that most cases of AIDS are contracted through sexual contact. One way of attacking this disease is to understand behaviors that contribute to the risk of pregnancy and sexually transmitted diseases.

The two surveys at issue—the Survey of Health and AIDS Risk Prevalence [SHARP], a project of the National Institute of Child Health and Human Development [NICHHD] is a large scale study designed to assess data on behavior that puts people at risk of AIDS and other STD's. It will provide accurate estimates of the number of people at risk for HIV infection, and will help predict future patterns of the spread of HIV infections. It will provide us with a body of knowledge upon which to base HIV prevention and control strategies and programs.

This proposal was bid competitively, peer reviewed by the NICHD's Advisory Council. The contract was won by the National Opinion Research Center at the University of Chicago. The survey instrument has gone through multiple reviews by the NIH Director's Office, HHS, and the Office of Management and Budget [OMB].

Mr. President, many public health and public policy groups in recent years have called for more information on health risks addressed by this survey. The organizations seeking this information include the American Red Cross, the American Public Health Association, and the American Medical Association.

Mr. President, more attention has been paid to the teenage sex survey. Like the adult survey, this study tries to gather information about how and why teenagers put themselves at risk for unintended pregnancy and of serious or fatal diseases such as AIDS.

It is important to emphasize that this is not a random leaflet distributed to unsuspecting or innocent children. Parents must give written permission for their teenagers to participate. Interviewers will inform parents fully about the study and give them a chance to see the questions before they ask for permission. In addition, permission from school administrators will be required to administer the screener questionnaire in sample schools. There are rigorous procedures for protecting the privacy of participants.

Mr. President, I describe these surveys in detail to make two important points. The first is that the National Institutes of Health, or world-class research institution, is an entity of which I am very proud. I respect their contributions to science and scientific discovery. The NIH would not have the reputation and respect that it has if it engaged in irresponsible research activities that were harmful to the American public.

My confidence in NIH has been reinforced by a careful review of this controversial issue. Although I am not a

social scientist or expert in survey research, I am persuaded that appropriate safeguards are in place to protect against the consequences that Senator HELMS fears. These are serious efforts to address pressing public health problems. While the questions, when taken out of context, seem quite graphic, the sad truth is that our young people and many adults are putting themselves at risk. We should not oppose information, no matter how disturbing that information might be.

These studies cannot be a substitute for the important efforts that must be made to prevent risky behavior and promote responsible actions by Americans to protect their own health. In addition to the social tragedy that these diseases represent, they are also very costly. The costs of AIDS treatment and care far outweigh the costs of prevention. Prevention requires knowledge. NIH is responsible for providing the knowledge that I hope will enable us to shape policies that will help educate our citizens on the very real life-threatening dangers they face.

Mr. KOHL. Mr. President, I rise in support of the amendment offered by our colleague from Illinois.

There is one fundamental question at issue here. Do we believe that our scientific research is best determined by scientists or by political leaders? I believe it is best determined by scientists.

We have a very long tradition of independent scientific research—a tradition that has led the Nation to an unparalleled international scientific status in many areas. But in isolated instances in our history there have been incidents in which science has been ruled, not by the national interest, not by the merits of the research itself, but by political judgments. The consequences are almost always chaotic.

There have been attempts to legislate what can be taught in schools, and they have always failed. There have been attempts to legislate what kinds of research can be conducted, and they have failed. Intellectual freedom is one of the fundamental values upon which our country was founded, and when threatened has always prevailed.

The research freedom provisions in H.R. 2507 preserve that intellectual freedom by preserving the integrity of the scientific review process. The language simply says "no" to politically motivated decisions on human behavior research. It says "no" to the administration's efforts to undermine previously peer-reviewed and approved surveys in order to politically appeal to an outspoken minority.

It says "yes" to sound research, peer-reviewed research, ethical research, and research that has already been deemed to be desperately needed.

Tolerance of political games with research has ominous implications for the Nation's ability to deal with teenage pregnancy, sexually transmitted diseases, and AIDS. The costs of failure are staggering, both in human and financial terms.

We must have the political courage to vote this matter out of the political arena and back into the areas of public health management and scientific research, where it belongs. We can expect, then, that public health administrators and social researchers will be sensitive to the concerns of taxpayers; that they will factor in legitimate public concerns as they design their research.

I thank my colleague from Illinois for his leadership on this matter. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois [Mr. SIMON]. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. I announce that the Senator from Illinois [Mr. DIXON] and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. LUGAR] is necessarily absent.

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

The result was announced—yeas 57, nays 40, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—57

Adams	Dodd	Lieberman
Akaka	Durenberger	Metzenbaum
Baucus	Fowler	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Graham	Nunn
Boren	Harkin	Pryor
Bradley	Hatfield	Reid
Breaux	Heflin	Riegle
Bryan	Inouye	Robb
Bumpers	Jeffords	Rockefeller
Burdick	Johnston	Sanford
Chafee	Kennedy	Sarbanes
Cohen	Kerrey	Sasser
Conrad	Kerry	Shelby
Cranston	Kohl	Simon
Danforth	Lautenberg	Wellstone
Daschle	Leahy	Wirth
DeConcini	Levin	Wofford

NAYS—40

Bond	Gramm	Pressler
Brown	Grassley	Roth
Burns	Hatch	Rudman
Byrd	Helms	Seymour
Coats	Hollings	Simpson
Cochran	Kassebaum	Smith
Craig	Kasten	Specter
D'Amato	Lott	Stevens
Dole	Mack	Symms
Domenici	McCain	Thurmond
Exon	McConnell	Wallop
Ford	Murkowski	Warner
Garn	Nickles	
Gorton	Packwood	

NOT VOTING—3

Dixon	Lugar	Pell

So, the amendment (No. 1756) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1757

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

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Illinois [Mr. DIXON and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL], would vote "nay."

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. LUGAR], is necessarily absent.

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—51

Bond	Garn	Packwood
Boren	Gorton	Pressler
Brown	Graham	Pryor
Bryan	Gramm	Reid
Bumpers	Grassley	Roth
Burns	Hatch	Rudman
Byrd	Heflin	Sasser
Coats	Helms	Seymour
Cochran	Hollings	Shelby
Conrad	Kassebaum	Simpson
Craig	Kasten	Smith
D'Amato	Lott	Specter
Dole	Mack	Stevens
Domenici	McCain	Symms
Exon	McConnell	Thurmond
Ford	Murkowski	Wallop
Fowler	Nickles	Warner

NAYS—46

Adams	Durenberger	Metzenbaum
Akaka	Glenn	Mikulski
Baucus	Gore	Mitchell
Bentsen	Harkin	Moynihan
Biden	Hatfield	Nunn
Bingaman	Inouye	Riegle
Bradley	Jeffords	Robb
Breaux	Johnston	Rockefeller
Burdick	Kennedy	Sanford
Chafee	Kerrey	Sarbanes
Cohen	Kerry	Simon
Cranston	Kohl	Wellstone
Danforth	Lautenberg	Wirth
Daschle	Leahy	Wofford
DeConcini	Levin	
Dodd	Lieberman	

NOT VOTING—3

Dixon	Lugar	Pell

So the amendment (No. 1757) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the cloture

vote on the motion to proceed to Senate Concurrent Resolution 89 which was to occur on Friday, April 3, 1992, be vitiated; that at 9 a.m. on Tuesday, April 7, 1992, the Senate proceed to the consideration of Calendar No. 418, Senate Concurrent Resolution 89; that the only amendments in order to this concurrent resolution and its preamble, in addition to the committee-reported amendments, be the following: A Gorton amendment regarding the creation of an international northern forests organization; a Wallop amendment regarding environmental climate control on which there be 1 hour equally divided; a Wallop amendment to the preamble regarding economic impact on which there be 1 hour equally divided; that no motions to recommit be in order; that there be 1 hour for debate total on the Gorton amendment, the concurrent resolution, and the preamble, with all time equally divided and controlled in the usual form; that following disposition of above-mentioned concurrent resolution and amendments, the Senate, without intervening action or debate, proceed to the House companion resolution, House Concurrent Resolution 292; that the resolution, as amended by the Senate companion, be agreed to; and that the preamble, as amended by the Senate companion, be agreed to.

I further ask unanimous consent that any votes ordered in relation to the resolutions be stacked to occur beginning at 12 noon on Tuesday, with the first vote to be 15 minutes in length, and any succeeding votes to be 10 minutes in length.

Mr. WALLOP. Mr. Leader, reserving the right to object, and I shall not, but I want to clarify one thing. As the leader knows, the rules of the Senate require that the motion to amend the body of the bill be considered and then the bill be considered and then the motion to amend the preamble, and I am assuming two things by the leader's request: That a move to amend the preamble will be in order before we have done and passed the body of the bill?

Mr. MITCHELL. I am advised that this is consistent with the normal procedure of amending the resolution, adopting the resolution, and then amending the preamble.

Mr. WALLOP. I understand that. I am simply asking that it be in order for us to debate this amendment before having adopted the resolution.

Mr. MITCHELL. I do not see any problem with that. I think that is consistent with the agreement.

Mr. WALLOP. Would the leader also be willing to have some of the time, should it be necessary, on the first Wallop amendment transferred to the second Wallop amendment with no additional time being added?

Mr. MITCHELL. I have no difficulty with that. I do not think that will be a problem. The fact is that the total time under this agreement is 3 hours. The first vote will occur at noon. So as long as we stay within the total 3 hours—I anticipate it is not likely that the full hour will be used on other provisions than those of the amendments to be offered by the Senator from Wyoming.

Mr. WALLOP. I think that is clear, and there is even some likelihood that the full hour will not be used. I would like the flexibility. I appreciate the leader's indulgence. I have no objection.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and the unanimous-consent request is agreed to.

Mr. MITCHELL. Mr. President, accordingly, in view of this agreement, the vote to occur now will be the last vote today. There will be only a pro forma session tomorrow. The Senate will not be in session on Monday.

Pursuant to this agreement, the Senate will begin debate on the concurrent resolution at 9 a.m. on Tuesday and votes will begin at noon on Tuesday, with the likelihood of there being three votes at that time.

For the convenience of all Senators, since this announcement is being made 5 days before those votes occur, I implore all Senators not to make requests on Tuesday morning that the votes now scheduled for noon on Tuesday begin later because we have to get to the budget resolution and that is intended to occur immediately after the caucuses on Tuesday.

So these votes will occur, three votes, beginning at noon on Tuesday. Senators are now on notice to adjust their schedules to be here for those votes.

Mr. President, I thank my colleagues.

THE NATIONAL INSTITUTES OF HEALTH REVITALIZATION AMENDMENTS

The Senate continued with the consideration of the bill.

Mr. DODD. Mr. President, I rise today to express my strong support for the National Institutes of Health [NIH] Reauthorization Act of 1992. This measure would expand Federal support for the kind of critical biomedical research that has made NIH the leading research institution in our Nation and throughout the world.

Unfortunately, while funding for NIH has increased each year, growth has been only 2 to 3 percent above inflation, not enough to adequately fund important research. This bill would increase funding in critical areas, including a 28-percent increase in funding for the National Cancer Institute and a 38-percent increase for the National Heart, Lung, and Blood Institute.

These funding increases will help us respond to serious concerns about NIH's inability to fund a sufficient number of research grant applications in recent years. In the last half of the 1980's, the number of new and competing grant applications awarded funds declined significantly. While the last 2 years have brought some improvement, 70 percent of researchers who apply for grants at NIH are unsuccessful.

We cannot afford to put science on hold, particularly science that holds promise for improving our Nation's health. In addition, if we fail to adequately support biomedical scientists, we may discourage students from entering this field altogether. Many of the best students will pursue other careers, where support is certain and budget cuts are not a constant threat. H.R. 2507 attempts to deal with this problem by authorizing significant increases in grant funding generally and a special $415 million authorization to provide grants to recruit women, minorities, and others into biomedical and behavioral research.

Mr. President, while the record of NIH is exemplary, I am greatly concerned about the institution's failure to adequately address the health concerns of women in this country. NIH has failed to adequately involve women in NIH-sponsored clinical research and also has failed to sufficiently support research on conditions that have particular significance for women—osteoporosis, breast cancer, and ovarian cancer. As a result, information on women's health problems is lacking and has resulted in second-rate care.

For example, heart disease claims more women's lives than any other disease, and yet every major study on the cause and prevention of heart disease involved only men. Women have not been included in other significant studies that examined premature heart disease and cholesterol levels. The lack of research specific to women's health has impacted the care provided to women. For example, little progress has been made in addressing the biology of menopause and the safety and efficacy of hormone replacement for the prevention of osteoporosis.

While NIH has begun to address these shortcomings, this bill would ensure continued progress by requiring the inclusion of women and minorities as subjects in research conducted or supported by NIH. The bill would establish an Office of Research on Women's Health to ensure adequate support for research on women's health throughout NIH. In addition, the bill would establish research programs on breast cancer, cancers of women's reproductive systems, osteoporosis, and related bone disorders.

Mr. President, several scientists and physicians from my home State of Connecticut have written or called my office to express their support for one particular provision of this bill. This provision would prohibit the Secretary

of Health and Human Services from withholding funding for research that has been approved by the merit review system unless a majority of an ethics advisory committee recommends that such funding be withheld. Given the careful evaluation of the social and ethical implications of research projects included in NIH peer review processes, I support this effort to protect the merit-based scientific review process that is one of the great strengths of NIH.

Lastly, I want to express my support for a provision in the bill that lifts the moratorium on Federal funding for fetal tissue transplantation research while imposing important safeguards regarding the acquisition and use of tissue for such research. While I firmly support a woman's right to choose, I would not support Federal funding of research that would serve to encourage abortion. I do, however, support this legislation that would nullify the moratorium on NIH-supported fetal tissue research.

I support this legislation because I am convinced that the safeguards included in the bill ensure that the decision to terminate a pregnancy will be independent from the retrieval and use of fetal tissue. The safeguards in this bill are not a substitute for—but additions to—the already extensive ethical, technical, and scientific review that all research applications undergo. For example, H.R. 2507 would require that informed consent to donate the tissue be obtained only after the decision to terminate the pregnancy has been made. It would prohibit women from designating the recipient or from being informed of the identity of the recipient. And the bill would make it illegal for any person to purchase or sell fetal tissue.

Fetal tissue transplantation research holds immediate promise for people who suffer from diabetes, Parkinson's disease, spinal cord injuries, and other chronic disorders, and I believe it is time to end this unnecessary restraint on biomedical research.

Mr. President, I want to again express my strong support for this bill. It would increase funding in critical areas of research and ensure that NIH maintain its position as the preeminent biomedical research center in the world. The 1980's brought many exciting advances in biomedical research and it is essential that funding be provided to allow us to take advantage of these and future opportunities. I strongly urge my colleagues to support this bill.

Mr. PELL. Mr. President, I rise in strong support of H.R. 2507, the National Institutes of Health Reauthorization Act of 1992. This legislation will strengthen the already preeminent position of the NIH, the world's premier biomedical research institution, and will make needed changes in policy that have hindered the progress of scientific research in this Nation and throughout the world. The current NIH Director, Dr. Bernadine Healy, has served with great distinction in this most important position and will no doubt continue to lead the NIH research effort with the urgency and care that such responsibility requires.

Mr. President, as an original cosponsor of the Senate bill to reauthorize programs at NIH, and as one who has for many years strongly supported the reauthorization effort, I must say how pleased I am with the legislation that is pending before us today. This legislation will revitalize many programs at NIH, including research on breast and prostate cancer, AIDS, and women's health needs. It also recognizes and addresses a disease of growing importance to many Rhode Islanders and others across this Nation, chronic fatigue syndrome [CFS], also known as chronic fatigue immunodeficiency syndrome [CFIDS].

I am encouraged by and strongly favor the provisions in this legislation that provide additional support to the National Cancer Institute, and in particular, to its research and cancer control programs. As the author of the legislation that created the NCI's international cancer research data bank [ICRDB], which assists in the exchange of information on the diagnosis and treatment of cancer between clinicians here and abroad, I am very pleased that the Senate Labor and Human Resources Committee, in its report, recognizes the ICRDB's important work and calls for the NCI to explore further ways to serve the ICRDB's services and needs. I hope that the NCI will undertake this effort with the diligence and care that it deserves, and I am confident that, under the excellent leadership of Dr. Samuel Broder, the NCI will give the ICRDB its strongest support.

Mr. President, I am particularly pleased by the Senate's resounding vote to retain the provisions overturning the administration ban on fetal tissue transplantation. While the questions surrounding the debate are complex and difficult, I am delighted that 77 Senators, after careful consideration, recognized and agreed that the Federal Government should resume funding this vital research—research that holds great promise for victims of many debilitating and painful diseases, including Parkinson's disease.

Mr. President, I would also note that this legislation contains provisions that are very appropriate during this Decade of the Brain. Among those provisions are efforts to collect data regarding traumatic brain injury and to encourage research on the brain and on human behavior.

I would note, Mr. President, and ask the chairman of the Committee on Labor and Human Resources to respond, that our committee report inadvertently left out a paragraph that was intended to be included in the committee views section and that further describes the committee's intent with regard to the types of biomedical and behavioral research that is authorized. That paragraph read as follows:

> There is a serious deficiency in programs and facilities dedicated to the study of violence as a major health problem. As a step toward the understanding and knowledge necessary for the development of effective programs of intervention and prevention, the Committee encourages biomedical and behavioral research in this area.

It is my hope, Mr. President, that Chairman KENNEDY could indicate for the record that this language was inadvertently left out of the committee report. I might add how appreciative I am of the chairman's attention to my concerns and interest in this legislation, and commend Van Dunn of the chairman's staff for working so closely with my staff on a number of important areas.

I urge passage of this important legislation. I yield the floor.

Mr. KENNEDY. Mr. President, I thank the senior Senator from Rhode Island for his remarks. He is quite correct that the paragraph that he read into the RECORD was inadvertently left out of the committee report. I believe his statement makes it clear that the NIH is authorized under the pending legislation to conduct biomedical and behavioral research on violence, and that the Senate Labor and Human Resources Committee encourages this research as a step toward developing effective prevention and intervention programs. I thank the Senator for this clarification.

Mr. ADAMS. Mr. President, I would like to ask that a letter from Rev. Guy Walden be included in the RECORD. Reverend Walden could not be here during the debate on the Hatch amendment on Tuesday. But I shared with him a copy of the amendment. He has followed this debate very closely because of his personal involvement with the research. And he has spoken personally with many of my distinguished colleagues.

He writes me that he is strongly opposed to the Hatch amendment. But I will let his letter speak for itself. I would ask that it be included in the RECORD in its entirety.

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

GENETRIX,
March 31, 1992.

Re Concerning the amendment to the fetal tissue transplant bill that is now on the Senate floor.

Senator BROCK ADAMS,
U.S. Senate, Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR ADAMS: I appreciate you sending me a copy of the proposed amendment for my response. The amendment that was proposed by Senator Hatch seeks to aid victims of many diseases by providing some types of fetal tissues for study and trans-

plants. I think it is commendable for Senator Hatch to at least try to address this great need in our nation, but I believe that the amendment falls woefully short in a couple of areas:

First of all the types of tissue that he is proposing, the ectopic tissue and the spontaneously aborted tissue, most of the doctors and people in the medical community will tell you that not only is this type of tissue not sufficient, but that this tissue has actually come from an organism that is diseased or infected and, therefore, is not of any therapeutic use to another person. Therefore, I would like to see all of the tissue, the ectopic, the spontaneous, and the electively aborted tissue be available for transplant and research purposes so that we can save as many lives as we can, and prevent as many abortions as we can by offering therapeutic alternatives to parents of genetically-diseased and problem children.

The second objection that I have to Senator Hatch's amendment is that it does not address the current moratorium which causes such a blight on this research. This moratorium needs to be lifted for a number of reasons, not the least of which is so that the stigma that this research has upon it can be lifted, and this life-saving transplant and research be permitted to go forward in our country.

The third objection that I have to Senator Hatch's amendment is that it does not address the safeguards recommended by the Adam's Commission that look at the Fetal Tissue issue in 1988. They recommended several safeguards, and none of the safeguards are included in Senator Hatch's amendment. Senator Hatch's amendment, in no way, provides any laws to govern what is done in the private sector with private funds. I believe that we need responsible laws to curb any abuses that can come from the private sector and from people who are motivated strictly by the bottom line profits, and so I would like to see * * *

In summation, I think that the amendment that is offered by Senator Hatch is a Band-Aid on a wound that is not curing the wound, but is merely putting a dressing over a very difficult issue. I would like to see Title II of this bill passed as it has been proposed on the Senate floor with the safeguards that are contained therein. I believe that many people would benefit from the use of the electively-aborted tissue that is now being discarded in the trash cans or incinerators. I believe if we could utilize the tissue that is already being aborted and discarded to save lives and to help reduce abortion, we ought to do that. I believe that the original bill ought to be passed as it is written. I believe that the amendment to this proposal by Senator Hatch is something that we can already do under the moratorium and would do nothing to help take the blight off this research and pass the necessary and responsible laws that we need to have to govern this research.

Thank you very much.

REV. GUY WALDEN.

THANKS TO THE COALITION AND ITS MEMBERS

Mr. ADAMS. Mr. President, I rise today to recognize the contributions of a number of important organizations and individuals whose hard work enabled the passage of the NIH Reauthorization Act and specifically title II of that act, the provision to lift the ban on fetal tissue transplantation research.

The Coalition for Research Freedom, under the capable leadership of Lynne Morrison, brought together a range of different health, science, and academic organizations—united to preserve research freedom. I would like to specifically recognize some of the individuals working for these groups. Richard Fuller and Barbara West of the American Federation of Clinical Research, Maureen Byrnes and Larry Solar of the American Association of Universities, Leslie Goode and Steve Northrup of the Association of American Medical Colleges, Sally Rosenberg and Eric Zimmerman of the Juvenile Diabetes Foundation, Shami Feinglass of the National Association of State Universities and Land Grant Colleges, Lynne Lawrence of the American Fertility Society, Judy Auerbach of the Consortium of Social Science Association, Todd Ibrahim of the Association of Professors of Medicine, Karen Hendricks of the American Academy of Pediatrics, Troy Zimmerman of the Multiple Sclerosis Society, Pamela Thornton of the American College of Physicians, and Amanda Spitler of the American Academy of Neurology. And the additional efforts of Cynthia Merrifield of the American Medical Association.

Without the tireless efforts of these individuals and the members of their organizations, this research would not be able to go forward.

Through their commitment and dedication to the issue of research freedom, we have been able to lift the ban on life-saving research, and have given millions of people stricken with devastating and fatal diseases new hope.

I would like to have the list of organizations making up the Coalition for Research Freedom included in the RECORD.

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

ORGANIZATIONS ENDORSING S. 1902, THE RESEARCH FREEDOM ACT TO LIFT THE BAN ON FETAL TISSUE RESEARCH

Alliance for Aging Research.
Alzheimer's Association.
American Academy of Neurology.
American Academy of Pediatrics.
American Association of Colleges of Pharmacy.
American Bar Association.
American Cancer Society.
American College of Physicians.
American College of Obstetricians and Gynecologists.
American Council on Education.
American Diabetes Association.
American Federation for Clinical Research.
American Fertility Society.
American Gastroenterological Association.
American Geriatrics Society.
American Jewish Congress.
American Medical Association.
American Medical Student Association.
American Medical Women's Association.
American Paralysis Association.
American Pediatric Society.
American Physiological Association.
American Physiological Society.
American Society for Microbiology.
American Society of Human Genetics.
Arthritis Foundation.
Association of Graduate Schools.
Association of American Medical Colleges.
Association of American Universities.
Association of Medical School Pediatric Department Chairmen.
Coalition for Research Freedom.
Consortium of Social Science Associations.
Council of Graduate Schools.
Cystic Fibrosis Foundation.
Enlightened Visions.
Epilepsy Foundation of America.
Fred Hutchinson Cancer Research Center.
The Gerontological Society of America.
Huntington's Disease Society of America.
Juvenile Diabetes Foundation.
March of Dimes.
National Association of State Universities and Land-Grant Colleges.
National MPS Society, Inc.
National Multiple Sclerosis Society.
Parkinson's Disease Foundation.
Parkinson's Support Groups of America.
Parkinson's Action Network.
People for the American Way Action Fund.
Society for Pediatric Research.
Wellness Interaction Network.
Young Parkinson's Wellness Network.

Mr. MCCAIN. Mr. President, I rise today to express my support for passage of the National Institutes of Health reauthorization bill.

Since its inception, the National Institutes of Health has, together with the private sector, made America the world leader in biomedical research.

Research carried on at the National Institutes of Health, over the course of its existence, have helped us a great deal in coming to understand more about our bodies and so many of the diseases that afflict us. I, as I know is every American, am grateful for the terrific work that is done at the National Institutes of Health—work from which we all benefit.

This legislation reauthorizes funding for the critical activities being carried on at the National Institutes of Health.

It increases funding for the National Cancer Institute. Under this legislation, $2.4 billion would be authorized in fiscal year 1993 for all National Cancer Institute programs—an increase of 30 percent over the 1992 appropriation.

It increases funding for the National Heart, Lung and Blood Institute. Under this legislation, $1.65 billion would be authorized in fiscal year 1993—an increase of 43 percent over the 1992 appropriation.

It expands the National Library of Medicine.

And, it authorizes funding for badly needed biomedical and behavorial research facilities.

In sum, this legislation is an investment in our future, as biomedical research is the key to unlocking the doors of the future to better health for the American public.

In spite of all the great things being done at the National Institutes of Health, unfortunately, it seems that all too often the biomedical research efforts have not adequately addressed the health needs of women in our society.

Mr. President, women comprise more than half of our Nation's population. Women are certainly affected by diseases such as heart disease, Alzheimer's, arthritis, diabetes, and cancer, the bulk of the research being conducted at the National Institutes of Health focuses almost exclusively on these diseases as they affect men.

What's more, diseases affecting only women—such as ovarian, cervical, and breast cancers, are given too little, if any, attention.

Mr. President, it is critical that women be included in the biomedical research being conducted at our Nation's premier Federal research institution. I am pleased that this legislation will do just that.

The legislation we are considering today will not only significantly increase the resources available for the research into women's specific diseases, it will also include women in the research that is being conducted into diseases that affect men and women alike.

Specifically, this legislation would do a number of things to include women in the biomedical research being conducted at the National Institutes of Health.

First, it would require the Director of NIH to include women and members of minority groups in all NIH-sponsored projects.

Second, it requires greater inclusion of women in aging research. It requires the Director of NIH to conduct research into the aging process of women, including studies on the effects of menopause.

Third, it establishes an Office of Women's Health.

Fourth, it requires more extensive research on breast cancer and cancer's involving women's reproductive systems. This portion of the bill is similar to that included in legislation I previously sponsored with Senator MIKULSKI. Specifically, the bill authorizes $155 million for such research in fiscal year 1993, and such sums as necessary in fiscal years 1994–97. In fiscal year 1993, $55 million of the $155 million would be authorized for basic research into the etiology and causes of breast cancer; $25 million for clinical research, prevention, and education programs on breast cancer; and $75 million for research and demonstration programs, including the development and operation of breast and prostate cancer research centers.

And, fifth, this legislation requires more extensive research on osteoporosis, Paget's disease, and related bone disorders.

Mr. President, I would also like to address the lifting of the ban against fetal tissue research that is contained in this legislation.

The vote that I cast today to lift the ban against fetal tissue research is one that I have thought about very, very carefully. In my years as a representative of Arizona in both the House of Representatives and the Senate, I have consistently supported the rights of the unborn. I have cast approximately 70 votes to protect the unborn. I have always been, and continue to be, pro-life. I do not believe that abortion is an acceptable form of birth control, nor do I believe that it should be funded by the American taxpayer.

Nevertheless, I say in all honesty that I have been torn by the issue of the use of fetal tissue for the purposes of medical research. The use of fetal tissue has shown great promise for the treatment of such insidious diseases as Parkinson's disease and juvenile diabetes.

The victims of these diseases, and their families, have prayed for a breakthrough such as may be achieved through the use of fetal tissue. In light, of the fact that induced abortions are legal in this country, they ask why the tissue resulting from those abortions cannot be used in an effort to save countless numbers of lives.

I have lost sleep struggling with this very question. My abhorrence for the practice of abortion is unquestionable. Yet, my abhorrence for these diseases and the suffering they cause is just as strong. In considering alternatives to an outright lifting of the ban on the use of fetal tissue for research in federally funded facilities, I had hoped that the use of tissue resulting from ectopic pregnancies and miscarriages would be considered by my colleagues to be sufficient.

The amendment offered by Senator HATCH would have established a private bank for this type of tissue. Unfortunately, the Hatch amendment failed. The majority of my colleagues do not consider this a viable compromise. I had hoped otherwise. Nonetheless, I feel that Congress must act affirmatively to support research to save lives, using tissue obtained through a practice which is currently legal in this country. For that reason, lacking another alternative, I support lifting the ban on the use of fetal tissue for research by the National Institutes of Health.

I strongly believe that the safeguards in the bill remove any incentives for inducing abortions either for direct donation to an ailing relative or for monetary gain. I would never support lifting the ban if I thought it would result in the creation of a market for fetal tissue. The idea of such a market is barbaric, and the safeguards placed in the bill, and the criminal penalties for such violations, are necessary to prevent this from occurring. Only my strong belief that these safeguards are sufficient permit me to vote in favor of lifting this ban.

This decision has no effect on my pro-life position. I remain committed to protecting the rights of the unborn and upholding the sanctity of life. I have never wavered from this position, nor do I believe that I have done so now.

Mr. MITCHELL. Mr. President, I rise in support of the National Institutes of Health Reauthorization Act of 1992. This legislation revises and reauthorizes many important programs of the National Institutes of Health.

The research freedom provisions of this legislation remove a barrier to the advancement of science and medicine that has been in place since 1988. The administration's moratorium on Federal funding for human fetal tissue transplant research has stigmatized this field of research, forcing many scientists to focus solely on animal fetal studies, seek limited private funds to continue their work, or abandon their research altogether.

This has effectively halted fetal tissue transplant research in the United States. It has halted a field of promising research that could potentially lead to therapeutic treatments and possibly cures for millions of Americans suffering from many incurable diseases and disabilities.

These conditions include Parkinson's, diabetes, Alzheimer's, Huntington's, leukemia, epilepsy, ALS, multiple sclerosis, and many others. The human cost of this moratorium is incalculable. For, as long as this moratorium on funding continues, the discovery of potential treatment and cures is delayed, and the suffering of millions of Americans prolonged.

Fetal tissue research has already made substantial contributions to medicine in the areas of prevention, diagnosis, and treatment. It was research with fetal kidney tissue that led to the discovery and development of the polio vaccine in the 1950's. The vaccine for German measles and treatment for the Rh factor, the condition that results when mother and fetus have incompatible blood types, also emerged from fetal tissue research. Further, advances in prenatal diagnosis of genetic defects have evolved due to fetal tissue research. All of these advances in medicine and in the health of society would not have occurred if a moratorium on fetal tissue research had been in place. And further advancements in medicine and society's health should not be delayed by the moratorium of today.

The promise of fetal tissue transplant research has been proven. We have learned a great deal from the limited human fetal tissue transplant research that has taken place in this country and overseas. We have learned that fetal tissue has the unique characteristics of adapting and growing rapidly. We have learned that fetal tissue will thrive in virtually any recipient with minimal risk of rejection.

We have learned that adult decayed brain tissue can be regrown with fetal tissue. We have even learned that pro-

gression of disease can be retarded and possibly reversed and genetic disorders possibly corrected. But most importantly, we have learned that there are many more potential medicinal benefits of fetal tissue yet to be discovered.

Fetal tissue transplant research must continue and must receive Federal support. This research, a promising avenue for treatment for the many incurable diseases and disabilities from which millions of Americans suffer must not be suppressed. I urge all of my colleagues to support the provisions of this legislation and remove the administration's moratorium on Federal funding for fetal tissue transplant research.

Mr. SIMPSON. Mr. President, I rise in support of this legislation. I believe it is time to get real about the emotional issues that seem always to confront us here and to stop allowing our good sense and reason to be coopted by the shrill rhetoric of political polemicists. It is truly time we focus on—and decide—the real issues before us, in a fashion whose chief concern is policy. Public policy. Not politics. Not polemics. Rational, intelligent policy.

As some of my colleagues know, I worked long and hard with my friend Senator CHAFEE and others to forestall the release of the so-called gag rule, an ill-conceived, Reagan-era regulation which restricts the information available to women who receive reproductive health care at title X family planning clinics. I also accept that this administration continues a policy of discouraging anything to promote abortion, and I do not disagree with that. but the gag rule is not about abortion, and it is unfortunate that it was ever cast as such. The gag rule is about the kind and quality of health care that is available to women of such modest means that they must rely on publicly assisted clinics for medical services. The gag rule is about medical ethics and a physician's duty to his patient—his duty to impart and discuss all legal and medically sound interventions for managing a pregnancy. It is assuredly about information, and the first amendment. Finally, it is about the realities of the health care system in places like Wyoming, where nonphysicians provide the bulk of health care services because we simply don't have enough doctors to do the job. Those are the real issues on which discussion of the gag rule should turn. They are critical issues. The success of the proponents of the gag rule in casting the issue as some referendum on abortion—a spin which opponents could not overcome in time—has resulted in very bad policy. If we are to do our jobs here, then it is time we get away from the nuggets of unbending ideology that polarize this body to the exclusion of any meaningful dialog or factually based discussion of the real issues.

Similarly, Mr. President, title II of the NIH reauthorization bill—which would lift the ban on Federal funding of fetal tissue transplantation research—is not about abortion either. This provision is about expanding the scope of research that offers real hope of finding cures for Parkinson's Disease, childhood diabetes, and devastating genetic disorders. Mr. President, this provision is about saving lives.

Unfortunately, this issue has from the beginning been entangled in the abortion debate—a place it most assuredly does not belong. When the former HHS Secretary imposed the ban on fetal tissue research funding, he did so solely on the basis of an unproved and unfounded assumption: That such research would increase the demand for abortions; that knowledge of this research would lead women more often than not to decide to terminate their pregnancies for purposes of donating tissue. What a wretched assumption to make about American women. What a grossly paternalistic view of women's capacity to make reasoned, moral choices on issues of such great personal weight and consequence. That is a logic so specious it defies comprehension, and I would hope my colleagues would not subscribe to it.

Mr. President, I do not want to get trapped in a discussion of abortion here, except to emphasize one point, one essential, factual bit of history in the evolution of this issue.

In 1988, the National Institutes of Health, at the Secretary's request, convened an outside panel of experts on fetal tissue research to study the ethical, legal, and scientific issues associated with the research. This panel, which was composed of lawyers, theologians, physicians, and scientists, voted overwhelmingly to approve the transplantation research as acceptable public policy. That decision was adopted unanimously by the advisory committee to NIH.

The panel was also asked to consider a number of weighty moral and philosophical questions, and to speculate on the likely social effects of expanded research activity. Among the questions the panel entertained was this: "Does the use of fetal tissue encourage women to have an abortion?" The panel reported thus: "Research using fetal tissue has been conducted for 30 years and there is no evidence the research has encouraged abortion."

However, Mr. President, just to ensure that the scales will never, ever be tipped in favor of abortion, the legislation before us today contains a number of ethical safeguards—all recommended by the NIH experts—to completely separate a women's decision to terminate her pregnancy from her decision to donate tissue for research. There will be no direct donations, no payment of any kind under criminal penalty, and the decision to donate must come after the decision to abort. These safeguards are sufficient in my mind to allay any fear of improper or misguided decisions. Moreover, these regulations would control both public and, for the first time, privately funded research as well.

Mr. President, fetal tissue transplantation research holds such tremendous promise for so many American families who are suffering from disabilities and diseases for which there are as yet no know cures, nor effective therapies. The NIH advisory panel noted that experimental transplant therapy on Parkinson's patients, "has resulted in significant clinical improvement and real quality of life changes." Juvenile diabetes, head and spinal cord injuries, genetic abnormalities which result in so many elective abortions—all of these have shown evidence of responding to fetal tissue therapy. What logic is it that would hamstring earnest efforts to pursue these promising areas of scientific investigation?

I would like to quote from an op-ed piece by Dr. J. Sanford Schwartz, president of the American Federation of Clinical Research, the Nation's largest association of physician investigators. he states:

> Fetal tissue transplantation research can be a very useful path to combat pain and suffering * * * it [also] may be the only bridge to even greater discoveries on the course of disability and disease. But we can only cross that bridge if we are allowed to pursue the research.

Dr. Schwartz then goes on to wonder:

> In the future, will good science have to be in some ways better than just "good"? Will it also have to be politically correct? If that is the case, we have lost the foundation of research achievement in the United States.

It is time to separate abortion from science, politics from research—and science from fiction.

I am heartened to see that, on this issue at least, so many of my colleagues have devoted to the pending proposal the thorough, thoughtful review and consideration it deserves. My fine friend, Senator HATFIELD, who is among this body's staunchest of prolife advocates, has studied this issue on its merits and concluded that support for such potentially life-saving research is the only true pro-life position to take. My mentor and respected colleague, Senator THURMOND, has weighted the potential benefits of such research in a deeply personal manner, and has likewise concluded that they far outweigh any hypothetical risk of induced demand for abortion. I urge any of my colleagues who are still undecided—feeling queazy—about this issue to simply look at the facts—study the NIH advisory panel's report and recommendations. Talk with the researchers and the advocates—on both sides. And then let reason be your guide. I think you will find the arguments in support of expanding these research efforts most compelling.

Mr. HATCH. Mr. President, I would like to thank the members of my health staff who have been working

day and night on this bill. Specifically, I would like to acknowledge the yeoman effort by Dr. Ann Labelle, Bruce Artim, Scott Daniels, Christie Fisher, and Dr. Gary Noble of my staff, Stephanie Monroe of Senator COATS' staff, John Marshburn with Senator HELMS, and Doug Badger of the Republican Policy Committee. All of these individuals deserve thanks for tackling all of the tough issues in this bill.

While Senator KENNEDY and I disagree on this bill, we were able to work together successfully to offer the managers' amendment. The work of Dr. Van Dunn of Senator KENNEDY'S staff, Phyllis Allbritton of Senator MIKULSKI'S staff, and Rush Russell of Senator BRADLEY'S staff to help accomplish this was appreciated.

Mr. SPECTER. Mr. President, I support the Senate version of H.R. 2507, the National Institutes of Health Reauthorization Act of 1992. As the ranking Republican member of the Labor, Health and Human Services, and Related Agencies Appropriations Subcommittee that funds the National Institutes of Health [NIH], I would like to outline for my colleagues some of the new programs authorized in this bill and briefly discuss the significance of these programs within Pennsylvania's biomedical research community.

The subcommittee began funding an exciting pediatric research initiative in fiscal year 1990 when, at our urging, child health research centers were created to foster bench-to-bedside research. The purpose of these centers was to hasten the application of laboratory research to the treatment of diseases and conditions that affect our Nation's children. The centers, each of which focus on a single theme or area of scientific inquiry, have quickly become leaders in the practical application of new scientific knowledge. Children's Hospital of Pittsburgh and the Children's Hospital of Philadelphia are 2 of the 19 institutions that have successfully competed for these grants.

H.R. 2507 provides statutory authority for the Child Health Research Centers Program within the National Institute of Child Health and Human Development, Mr. President, and I urge my colleagues to support this authorization.

H.R. 2507 also authorizes new centers for the study of the prevention, diagnosis, and treatment of cardiovascular disease among children. Cardiovascular disease is among the leading causes of morbidity and mortality among children, and the proposed centers offer the prospect of a focused, multidisciplinary approach to the study of such disease, an approach that embraces molecular biology, biochemistry, bioengineering, and genetics. The proposed centers would study such subjects as congenital and acquired heart disease, arrhythmias, preventive cardiology, and the intrauterine environment.

Such centers will take advantage of this approach to develop new methods for treating cardiovascular disease among children. Pennsylvania's leading pediatric research institutions are well positioned to compete for this new centers program.

In 1989, the National Center for Human Genome Research was established administratively within the NIH to support and coordinate our national research in the mapping of the human genome and the sequencing of human DNA. At the heart of this endeavor is the human genome project, a 15-year, international effort to map the entire genetic blueprint of the human body.

One of the most important participants in the human genome project is the Children's Hospital of Philadelphia, which was awarded a 5-year, $10 million grant to map chromosome 22, commonly known as the Philadelphia chromosome. Chromosome 22 is associated with at least eight forms of pediatric cancer and three often-fatal developmental disorders. The Children's Hospital of Philadelphia is one of just seven institutions in the United States to participate in the latest phase of this project, and the only pediatric hospital, or hospital of any kind, to do so. The hospital's partners in this research are the University of Pennsylvania Medical Center, the Fox Chase Cancer Center, and DuPont Merck.

The study of the human gene offers extraordinary promise for unparalleled breakthroughs in understanding, diagnosing, and treating genetic diseases. Genome research on chromosome 22, for example, has broad application to pediatric investigations into childhood leukemia, cancer, heart disease, and some forms of mental retardation. This bill encourages the NIH to give priority to research and research training programs that facilitate the transfer of basic knowledge gained from mapping and sequencing individual genes into new scientific techniques that will be useful in clinical settings, in research on specific diseases, and in diagnostic laboratories. H.R. 2507 would provide statutory authority for the National Center for Human Genome Research, which oversees this extraordinary work, and I urge my colleagues to support this legislation for this reason as well.

Another important aspect of the NIH reauthorization bill is its special attention to the health of women. The 1985 Public Health Service Task Force on Women's Health Issues urged us to pay greater attention to women's health needs. Mr. President, H.R. 2507 demonstrates our commitment to this goal. It establishes a Women's Health Clinical Research Advisory Committee; creates a data bank for women's health research; calls for additional research on aging among women; and provides for research programs on osteoporosis and other bone disorders. Most important, it also provides $155 million for research on breast cancer and other cancers of women's reproductive systems.

One of this country's leaders in research on women's health is Magee-Womens Hospital in Pittsburgh. One of the relatively few institutions in the United States devoted exclusively to the health needs of women, Magee-Womens Hospital has worked for over 80 years in a sphere of endeavor in which we, as a government, are relative newcomers. Magee-Womens Hospital's comprehensive breast care system is a national model, and it is institutions such as Magee that will lead us as we attempt to redress our years of neglect of the health care problems unique to the majority of our population.

Approval of H.R. 2507 is an important step in that redress, Mr. President, because it provides statutory authority for the Office of Women's Health, which has been established administratively within NIH.

Finally, Mr. President, I wish to call my colleagues' attention to a provision in H.R. 2507 that redesignates the National Center for Nursing Research as an Institute within the National Institutes of Health. It was just 7 years ago that we belatedly acknowledged that nursing research was part of the mainstream of biomedical research by creating the National Center. Now, we wish to accord nursing research still further recognition of its status by making it an Institute of the NIH. This recognition is richly deserved.

I am particularly pleased to support this change because of the many fine nursing schools in Pennsylvania. Among them is the University of Pennsylvania's School of Nursing, which is invariably included in any listing of the best nursing schools in America; to many observers, it is the very best. I can think of no better way to acknowledge its role, and that of the nursing profession, than by according Institute status to nursing research.

In conclusion, Mr. President, I wish to reiterate my support for H.R. 2507. The biomedical research performed under the NIH's auspices has enabled us to cure many diseases and to find better ways to treat those that we cannot yet cure. Our support for this legislation will greatly enhance the progress of biomedical research in our country today, and it will also help the many institutions in Pennsylvania that are such essential parts of our national medical research community.

WORKERS' FAMILY PROTECTION ACT

Mr. JEFFORDS. Mr. President, I thank my colleagues for accepting my amendment that is based upon a bill I introduced last year and that the Senate passed this year. This amendment is based upon the Workers' Family Protection Act. I realize some of my colleagues may not be familiar with this legislation; thus, I would like to take a

few moments to explain what this amendment is about. It is about protecting families, spouses and children, from exposure to workplace chemicals.

Small amounts of workplace chemicals are sometimes taken home on clothing or persons. This amendment asks our Government agencies responsible for an aspect of this problem to work together to figure out how big a problem this is and what the most effective solution is for stopping such contamination from occurring.

Subsequent to the bill passing the Senate, I have learned that children of parents employed in certain occupations face a higher risk of cancer. It is because of this cancer connection that I have decided to offer the Workers' Family Protection Act to the NIH reauthorization. NIH has outstanding cancer researchers whose expertise could be very important to understanding this problem.

This amendment offers a low-cost scientific process for learning about this problem. The highest cost in any year is less than half a million dollars. Industry does not oppose the Workers' Family Protection Act. In fact, allow me to quote from the National Association of Manufacturers in a letter dated February 10, 1992. "We have reviewed S. 353, the Workers' Family Protection Act, as amended, and commend you for making the favorable changes that are incorporated in the amended version * * *. We are not opposed to favorable consideration of S. 353, as amended, by the U.S. Senate." The letter is signed Randolf Hale, vice president, Industrial Relations Department. The Chemical Manufacturers also do not oppose this legislation. I also have letters from industries such as Olin Chemical Co., Du Pont, and Scott Paper Co. all in support of this legislation. Industry understands the problem and wants to see this problem addressed in a scientific manner.

Labor and environmental groups support this amendment. For example, the Environmental Defense Fund says:

> S. 353, the bill on which my amendment is based, outlines a scientific process for determining the risks posed by home contamination. The cost to the Federal Government, as determined by the Congressional Budget Office is insignificant. Thus, support for this legislation will not impose new costs on the government, nor take money away from other desperately needed health and environmental protection programs. The Environmental Defense Fund urges Senators to support S. 353.

Mr. President, I've just outlined several reasons that support passage of this amendment. The problem exists, and the proposed solution is based on science, imposes no costs, industry doesn't oppose it, labor and environmentalists support it. Thus, I thank my colleagues for their support, and their willingness to accept this amendment.

Now, Mr. President, let me provide just a sample of the background information I have on this subject. I will definitely condense the information as I have file drawers full of related information.

Family members have been exposed to workplace toxins in nearly every State. Allow me to name a few of these States: Florida, North and South Carolina, Kentucky, Tennessee, Virginia, Maryland, Pennsylvania, New York, and my home State of Vermont. Moving away from the eastern seaboard, homes have been contaminated in Ohio, Indiana, Iowa, Michigan, Missouri, Utah, Colorado, Oregon, and Hawaii. These are some of the States where home contamination has occurred.

Many of my colleagues may have heard of this home contamination problem in relation to asbestos. While many, many cases of lung cancer have resulted in family members of asbestos workers. In one study, almost half of the wives of asbestos workers were found to have sustained lung damage. Forty-two percent of their sons and 21 percent of their daughters had lung damage from asbestos. In one case, a 3-year-old girl died of lung cancer from asbestos. These statistics are frightening. Half the workers' wives had lung damage related to their husbands' job.

Nor is this a new problem, Mr. President. The first case I have identified dates back to 1935 in Pennsylvania. Workers' families developed chloracne from exposure to chlorinated organics brought home on the workers' clothes. For my colleagues unfamiliar with chloracne, it is a skin condition that results from exposure to toxins like dioxin. Deaths have been recorded from home contamination dating back to the 1940's.

Lead is another compound in which workers' families are often at risk. In my home State of Vermont, over half the children of battery plant workers were lead poisoned. All of the workers changed clothes at work and 90 percent of the workers showered before going home, and still, over half the children had very high blood lead levels. Dust in their homes contained over 2,000 parts per million of lead.

This is nothing, however. In a Tennessee smelter, 52 of 102 children had high blood lead levels and 7 of the children required hospitalization. In North Carolina, homes were found to contain 84,000 parts per million of lead. The newborn babies of lead workers have even been found to have elevated levels of lead in the blood from the baby's umbilical cord. This is clearly unacceptable.

Other contaminants in which home contamination has occurred include PCBs, mercury, beryllium, radionuclides, pharmaceuticals, and organic carcinogens.

It is my hope, Mr. President, that if the Workers' Family Protection Act is enacted, we can begin to protect workers' families from toxic chemicals inadvertently brought home from the workplace. This problem of take home toxins has occurred across the country. Health effects in family members have ranged from headaches to death. Small children seem to suffer the most. This amendment will help us identify the causes of home contamination, help us determine the threat such contamination poses, and help us prevent future cases. We can protect our children.

I believe H.R. 2507 is an appropriate vehicle for this amendment as both my amendment and H.R. 2507 are health related. NIOSH is primarily responsible for implementing the Workers' Family Protection Act. The expertise in the National Institutes of Health, however, could be very important in determining the risks associated with home contamination. For example, studies have shown the children of workers exposed to solvents have been found to be at higher risk of brain cancer. Children of workers in the printing or hydrocarbon industries are also at higher risk. The researchers at NIH may be able to help us understand the connection between childhood cancers and parental occupation.

It is my hope that the Director of NIOSH will avail himself of this expertise. Both the National Institutes of Health and NIOSH are part of Health and Human Services. Thus, co-ordination between these two entities will hopefully not be too difficult.

Though the amendment strongly encourages the Director of NIOSH to consult with NIH, I have not specified which division of NIH the Director should utilize. This was not an oversight. Since I do not know the New Mexico or types of different health effects which could occur as a result of take home toxins, I believed it best to leave that judgment up to the Director. In this way, the Director would be free to seek whatever health related expertise available at NIH that the Director may need.

This amendment should also not pose a financial burden on NIH. I envision NIH's role as one of providing occasional technical assistance to NIOSH or others involved in implementing the Workers' Family Protection Act. For example, ATSDR, in evaluating community health effects, may need to consult with or utilize in some other fashion NIH experts on various illnesses or effects. I believe it is important the ATSDR have access to NIH expertise when needed. To help identify where such expertise may be available, the Director may wish to appoint a representative of NIH to the task force created by this amendment. Again, I thank my colleagues for accepting this amendment and look forward to working with you in conference.

Mr. NICKLES. Mr. President, all of my colleagues would agree on the importance of Federal sponsorship of re-

search into deadly diseases. The number of deaths caused by the top 20 diseases are easily quantified: last year they claimed more than 2 million lives. The suffering they cause—in pain, disability, and human anguish—is incalculable.

Despite the great progress that science has made in recent decades, the toll from these lethal diseases continues to mount. This year, more than three-quarters of a million Americans will die of heart disease, nearly half a million will die of cancer, and an estimated 150,000 will succumb to cerebrovascular diseases.

While Government funding of research into the causes and potential cures for these diseases is essential, our resources are limited. Because of these limited resources, we who must vote each year on Federal appropriations for this research need more data—data on the number of deaths caused by the leading diseases and data on how much the Government spends to combat them.

Mr. President, my amendment would give us access to these data. It would require the Secretary of Health and Human Services to report annually to Congress on the number of deaths caused by the top 20 killers and the amount of Federal money spent on research, prevention, and education efforts with respect to each of these deadly diseases.

My amendment imposes no burden on HHS. The Department already collects these statistics. My amendment would simply require the Secretary to make this information available to us in a useful form. Mr. President, this amendment will give us a clearer picture of our research and funding priorities than we now have, and I urge its adoption.

Mr. RIEGLE. Mr. President, the National Institutes of Health have historically played an important role on the forefront of biomedical research. H.R. 2507, the NIH reauthorization bill, will increase funding for the National Cancer Institute, the National Heart, Lung, and Blood Institute, and it will focus attention on important women's health issues. In addition, it includes provisions known as the Research Freedom Act. The research freedom provisions would lift the administration's ban on Federal funding of fetal tissue research, impose standards for the ethical use of this technology, and provide a nonpolitical method for addressing ethical questions in all areas of scientific research. Mr. President, today I want to encourage my colleagues to support the National Institutes of Health reauthorization bill including the research freedom provisions, and oppose any amendments which would weaken these important measures. For millions of people with life-threatening illnesses like Parkinson's disease, diabetes, leukemia, and epilepsy, fetal tissue transplantation offers the potential for medical miracles.

Mr. President, we really don't know the extent to which fetal tissue transplantation may save lives, but the evidence from studies done so far is very promising. We have heard moving testimony in recent weeks which illustrate in the most human terms the way this technique can improve the quality of life for people with serious illnesses. There is no excuse for the moratorium on Federal funding of this research.

In 1988, shortly after the Department of Health and Human Services imposed its ban on Federal funding of fetal tissue research, President Ronald Reagan formed an expert scientific panel to examine the ethical implications of this research. They voted in favor of allowing research involving fetal tissue to continue, and endorsed guidelines to make sure that a women's decision to have an abortion was separated from the decision to donate tissue. The Reagan and Bush administrations to this day have failed to act on the panel's recommendation that the use of fetal tissue from any abortion, with appropriate safeguards, is sound public policy. As a result, research in this area has slowed to near standstill.

The Research Freedom Act codifies the guidelines set forth by the administration's panel. Mr. President, the safeguards set forth in this legislation make the argument that it will promote abortion null and void. The act says that a woman must consent to an abortion before she makes the decision to donate tissue. It says that she can't receive compensation for fetal tissue, and it says that she can't specify the recipient of the donation. Even more important, it applies these guidelines across the board to all fetal tissue research, whether publicly or privately funded, since right now there are no safeguards in place for private research.

Additionally, Mr. President, title II of the Research Freedom Act provides a nonpolitical mechanism for resolving these complex ethical questions in biomedical research in the future. The U.S. scientific community is held in worldwide regard because of its peer review process. This process requires that proposals for research go through several layers of review before they can be funded. In 1988, the Secretary of Health and Human Services prohibited funding of research on teenage sexual behavior after the review process had already decided it was worth funding. Without this important data, we will not have the information we need to effectively address issues like teen pregnancy, AIDS, and sexually transmitted diseases. Through title II of the act, if the Secretary determines that there is an ethical question about a research project, he must convene an advisory panel to review these ethical questions. The Secretary can withhold funding only if the panel agrees.

Mr. President, we need to recognize the importance of funding biomedical research and supporting the efforts of the National Institutes of Health. We also need to lift the ban on fetal tissue research, and create a mechanism for handling ethical questions in science in the future. I urge my colleagues to do this by supporting H.R. 2507 and the research freedom provisions it includes.

Mr. KENNEDY. Mr. President, this is a significant day for biomedical research, and all science. With passage of the National Institutes of Health Reauthorization Act of 1992, the Senate has confirmed the fundamental principle of freedom of inquiry that is the basis for major scientific discoveries and advances.

We have affirmed the value of the peer review process, which has served this country well in generating the most meritorious and promising biomedical research possible. We have done our best to reinforce the National Institutes of Health in its preeminent position in biomedical research in the world.

The bipartisan effort that brought us to this point reflects the real strengths of our democracy, the high priority that America gives to biomedical research, and the indispensable role of the Federal Government in supporting such research.

Our goal is to bring help and hope to millions of Americans suffering from disease, and our action today is a solid vote of confidence in the NIH, its past achievements, and its promise for the future. I commend each of my colleagues for their careful consideration of the complex and controversial issues involved in this measure and for their contributions to strengthening the bill. I also want to thank the many Senators who have come to the Senate floor during this debate and have made powerful and eloquent statements in support of biomedical research.

On the Labor Committee, I am particularly indebted to Senator ADAMS for his tireless efforts on behalf of research freedom, transplantation research, women's health, and many other priorities established in the bill.

I also commend each of the other members of the Committee—on the Democratic side, Senator PELL, Senator METZENBAUM, Senator DODD, Senator SIMON, Senator HARKIN, Senator MIKULSKI, Senator BINGAMAN, and Senator WELLSTONE, and on the Republican side, Senator HATCH, Senator KASSEBAUM, Senator JEFFORDS, Senator COATS, Senator THURMOND, Senator DURENBERGER, and Senator COCHRAN—for their individual contributions to this legislation and for their dedication to progress on medical research.

Although the question of supporting fetal tissue transplantation research dominated the debate, all of us are well

aware of the many other extraordinarily important provisions in this bill to enhance all aspects of biomedical research.

The success of our effort on this legislation was in no small part due to the tenacious efforts of numerous individuals and leading patient scientific and medical organizations.

On the fetal tissue research question and the issue of research freedom, the committee was deeply moved and extremely impressed by the testimony of Rev. Guy Walden, Joan Samuelson, Ann Udall, and Carol Lurie, whom many Senators met personally.

I also want to express my appreciation to the many organizations involved, including the Coalition for Research Freedom, the Breast Cancer Coalition, the Society for the Advancement of Women's Health Research, and the Congressional Caucus for Women's Issues, for their constructive role in developing this legislation. I ask unanimous consent on behalf of Senator ADAMS and myself that letters from these organizations and other materials may be printed in the RECORD at the conclusion of my remarks.

In addition, I want to thank the numerous staff members of the committee as well as staff members in Senators' offices for their excellent work on the bill.

Those who deserve a special note of appreciation include Phyllis Albritton, Kimberly Barnes-O'Connor, Laura Brown, Grant Carrow, Van Dunn, Michael Iskowitz, Mary Jeka, Robyn Lipner, Nick Littlefield, Vicki Otten, and Mona Sarfaty. Without their special talents and persistent efforts, today's action would not have been possible.

Finally, I want to make one additional point.

The United States is justifiably proud—and so is the Senate—of the accomplishments of the NIH in advancing medical research and improving the health and quality of life for millions of our fellow citizens and peoples throughout the world. Passage of this legislation will mean increased public investment in biomedical research, and the Senate deserves credit for upholding and strengthening that important principle.

At a time when so many citizens are concerned about what is wrong with America and wrong with the Government, it is worth emphasizing that the "N" in NIH stands for "National." Some things are being done right and done well by Government. NIH is a bright and powerful example of excellence in Government, and it is gratifying that the U.S. Senate has gone on record to keep it that way.

Mr. President, I ask unanimous consent to have printed in the RECORD material pertaining to this legislation.

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

COALITION FOR RESEARCH FREEDOM,
Washington, DC, March 19, 1992.

Hon. EDWARD KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: The Coalition for Research Freedom, urges you to support Title II of H.R. 2507, reauthorizing legislation for the National Institutes of Health which will come before the full Senate in the near future. Formerly S. 1902, "The Research Freedom Act of 1991," Title II of H.R. 2507 would lift the Administration's ban on federal funding of fetal tissue transplantation research and ensure that all biomedical research is conducted ethically and responsibly. We urge you to reject any weakening amendments to Title II and to support final passage of the entire bill.

Title II of H.R. 2507 fulfills three principal aims:

1. Lifts the ban on federal funding for fetal tissue transplantation research: Fetal tissue transplantation research is widely recognized as a promising research avenue for such diseases and disabilities as Parkinson's, Alzheimer's, diabetes, Huntington's, leukemia, epilepsy, spinal cord injury and many other chronic health conditions. Unfortunately most of the research gains and current endeavors in this exciting area are occurring outside of the United States because the Bush Administration has sustained a 1988 moratorium on federal funding of fetal tissue transplantation research despite the recommendation of a specially convened panel of ethicists and scientists.

2. Establishes a procedure to ensure that all biomedical research is conducted ethically and responsibly: If any research project invokes ethical concerns, provisions in Title II would require the Secretary of the Department of Health and Human Services to convene an ethical advisory board comprised of legal, medical, scientific, and theological experts, to review and issue binding recommendations on any research project invoking ethical concerns. In accordance with current regulation, Title II reiterates requirements that all federally-funded biomedical research be reviewed and approved by an Institutional Review Board in addition to peer review groups.

3. Sets in place safeguards for the conduct of research using fetal tissue: These safeguards would 1) ensure that the decision to terminate a pregnancy is independent from the retrieval and use of fetal tissue; 2) prohibit payment and other forms of remuneration and compensation for fetal tissue; 3) prohibit the woman from designating the recipient of the fetal tissue; and 4) require that informed consent to donate the tissue is obtained only after the decision to terminate the pregnancy has been made.

The Coalition for Research Freedom, an alliance of more than thirty organizations representing patients and their families, health care professionals and researchers, believes that Title II establishes safeguards and procedures that would protect the integrity of America's biomedical research while allowing society's ethical concerns to be addressed. The Coalition also supports Title II of H.R. 2507 as it would ensure that critical research endeavors that may lead to cures for many dreaded diseases and disabilities are allowed to continue.

Again, we urge you to support Title II of H.R. 2507 and to reject any weakening amendments. For more information about the Coalition for Research Freedom or fetal tissue transplantation research, please call Richard Fuller at 202-543-1877, or Leslie Goode at 202-828-0525.

Sincerely,

Alliance for Aging Research, Alzheimer's Association, American Academy of Neurology, American Academy of Pediatrics, American Association of University Professors, American Association of Colleges of Pharmacy, American College of Physicians.

American Council on Education, American Federation for Clinical Research, American Fertility Society, American Gastroenterological Association, American Geriatrics Society, American Jewish Congress, American Paralysis Association, American Pediatric Society, American Physiological Society.

American Society for Microbiology, American Society of Human Genetics, Association of American Medical Colleges, Association of American Universities, Association of Graduate Schools, Association of Medical School Pediatric Department Chairmen, Association of Professors of Medicine.

Council of Graduate Schools, Enlightened Visions, Epilepsy Foundation of America, Juvenile Diabetes Foundation International, National Association of State Universities and Land Grant Colleges, Parkinson's Action Network, Parkinson's Disease Foundation, Parkinson's Support Groups of America, Society for Pediatric Research, Wellness Interaction Network.

MEMBERS OF COALITION FOR RESEARCH FREEDOM

Alliance for Aging Research.
Alzheimer's Association.
American Academy of Neurology.
American Academy of Pediatrics.
American Association of Colleges of Pharmacy.
American Association of University Professors.
American Bar Association.
American College of Physicians.
American Council on Education.
American Diabetes Association.
American Federation for Clinical Research.
American Fertility Society.
American Gastroenterological Association.
American Geriatrics Society.
American Jewish Congress.
American Medical Student Association.
American Paralysis Association.
American Pediatric Society.
American Physiological Society.
American Society for Microbiology.
American Society of Human Genetics.
Association of American Medical Colleges.
Association of American Universities.
Association of Medical School Pediatric Department Chairmen.
Association of Professors of Medicine.
Council of Graduate Schools.
Enlightened Visions.
Epilepsy Foundation of America.
Juvenile Diabetes Foundation International.
National Association of State Universities and Land Grant Colleges.
National Multiple Sclerosis Society.
Parkinson's Action Network.
Parkinson's Disease Foundation.
Parkinson's Support Groups of America.
Society for Pediatric Research.
Wellness Interaction Network.

ORGANIZATIONS ENDORSING THE RESEARCH FREEDOM ACT TO LIFT THE BAN ON FETAL TISSUE RESEARCH

Alliance for Aging Research.

Alzheimer's Association.
American Academy of Neurology.
American Academy of Pediatrics.
American Association of Colleges of Pharmacy.
American Bar Association.
American Cancer Society.
American College of Physicians.
American College of Obstetricians and Gynecologists.
American Council on Education.
American Diabetes Association.
American Federation for Clinical Research.
American Fertility Society.
American Gastroenterological Association.
American Geriatrics Society.
American Jewish Congress.
American Medical Association.
American Medical Student Association.
American Medical Women's Association.
American Paralysis Association.
American Pediatric Society.
American Physiological Association.
American Physiological Society.
American Society for Microbiology.
American Society of Human Genetics.
Arthritis Foundation.
Association of Graduate Schools.
Association of American Medical Colleges.
Association of American Universities.
Association of Medical School Pediatric Department Chairmen.
Coalition for Research Freedom.
Consortium of Social Science Associations.
Council of Graduate Schools.
Cystic Fibrosis Foundation.
Enlightened Visions.
Epilepsy Foundation of America.
Fred Hutchinson Cancer Research Center.
Huntington's Disease Society of America.
Juvenile Diabetes Foundation.
March of Dimes.
National Association of State Universities and Land-Grant Colleges.
National MPS Society, Inc.
National Multiple Sclerosis Society.
Parkinson's Disease Foundation.
Parkinson's Support Groups of America.
Parkinson's Action Network.
People for the American Way Action Fund.
Society for Pediatric Research.
Wellness Interaction Network.
Young Parkinson's Wellness Network.

CONGRESSIONAL CAUCUS FOR WOMEN'S ISSUES

WOMEN'S HEALTH A VITAL PART OF THE NIH REAUTHORIZATION ACT OF 1991—MARCH 2, 1992

DEAR SENATE COLLEAGUE: Women's health research is finally becoming a priority! And we in Congress need to act to ensure that it stays that way. Legislation reauthorizing the National Institute of Health (H.R. 2507) passed in the House in July, 1991, and was recently reported out by the Senate Committee on Labor and Human Resources. This legislation contains many of the provisions of the Women's Health Equity Act that address our concerns about research on women's health. We strongly urge you to support this legislation when it comes to the Senate floor.

The Senate NIH reauthorization bill includes a number of important provisions to improve the quality of women's health:

It requires the appropriate inclusion of women and minorities as research subjects in clinical trials. No longer will clinical studies be carried out solely on men without a scientifically compelling reason to do so.

The Office of Research on Women's Health will be permanently established at NIH. This office will be charged with overseeing clinical trials and monitoring the status of women's health research.

An intramural research program in obstetrics and gynecology will be established at NIH as will a program to study osteoporosis and related bone disorders. Centers for research on contraception and infertility will also be established. These centers will be charged with developing new methods of contraception for women and men and new methods of prevention and treatment for infertility.

The National Cancer Institute will be required to provide an additional $80 million each year for basic research on breast cancer and $75 million for other reproductive cancers so that these terrible diseases can be prevented, detected early, and treated. Breast cancer is an epidemic in this country and we need to get serious now if we are to prevent the suffering and death of over 44,000 American women each year.

The NIH Reauthorization Act of 1991 brings critical attention to research on women's health. This has long been important to American women and their families. By passing this vital legislation, we will show that women's health is important to us as well.

We urge you to lend your support to the NIH Reauthorization Act!

Sincerely,

Patricia Schroeder, Co-Chair, Congressional Caucus for Women's Issues; Barbara Mikulski, U.S. Senator, Executive Committee Member; Olympia Snowe, Co-Chair, Congressional Caucus for Women's Issues; Nancy Kassebaum, U.S. Senator, Executive Committee Member; Constance Morella, Executive Committee Member; Eleanor Holmes Norton, Executive Committee Member; Cardiss Collins, Executive Committee Member; Nancy Pelosi, Executive Committee Member.

Maxine Waters, Executive Committee Member; Jan Meyers, Executive Committee Member; Marcy Kaptur, Executive Committee Member; Nita Lowey, Executive Committee Member; Joan Kelly Horn, Executive Committee Member; Barbara-Rose Collins, Executive Committee Member; Jill Long, Executive Committee Member; Susan Molinari, Executive Committee Member; Jolene Unsoeld, Executive Committee Member.

Barbara Boxer, Executive Committee Member; Marilyn Lloyd, Executive Committee Member; Patsy Mink, Executive Committee Member; Rosa DeLauro, Executive Committee Member; Mary Rose Oakar, Executive Committee Member; Elizabeth Patterson, Executive Committee Member; Nancy Johnson, Executive Committee Member; Barbara Kennelly, Executive Committee Member; Louise Slaughter, Executive Committee Member.

SOCIETY FOR THE ADVANCEMENT OF WOMEN'S HEALTH RESEARCH,
Washington, DC, March 24, 1992.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR EDWARD KENNEDY: The Society for the Advancement of Women's Health Research strongly urges your support of the provisions in HR 2507 (the NIH Reauthorization Act of 1991) that address women's health research.

While the Society applauds the progress that NIH has already made in the area of women's health research—the appointment of Dr. Bernadine Healy as Director of NIH, the creation of an Office of Research of Women's Health (ORWH), and the appointment of Dr. Vivian Pinn as Director of ORWH—we firmly believe that the Office requires a sense of permanence through the enactment of a law.

The bill contains many of the research provisions of the Women's Health Equity Act, among them: the funding of the Office of Research on Women's Health at NIH, the inclusion of women in clinical trials, and increased funding for breast and ovarian cancers, contraception and infertility, and osteoporosis.

A vote for this legislation will testify to your commitment to the health of women. We hope that you will be among those who translate rhetorical support for women's health into action by voting for HR 2507.

Sincerely,

JOANNE HOWES.

ORGANIZATIONS ENDORSING THE WOMEN'S HEALTH EQUITY ACT OF 1991

AIDS National Interfaith Network.
Alan Guttmacher Institute.
American Academy of Nurse Practitioners.
American Academy of Pediatrics.
American Association of University Women.
American College of Nurse Midwives.
American College of Preventive Medicine.
American Federation of State, County and Municipal Employees.
American Jewish Congress.
American Nurses Association.
American Psychiatric Association.
American Psychological Association.
Arthritis Foundation.
Association for Women in Science.
B'nai B'rith Women.
Breast Cancer Coalition.
Business and Professional Women, USA.
Campaign for Women's Health.
Center for Population Options.
Center for Women's Policy Studies.
Committee for Children.
Communications Workers of America.
Federally Employed Women.
Federation of Organizations for Professional Women.
General Federation of Women's Clubs.
Girls Incorporated.
Human Rights Campaign Fund.
Jacobs Institute of Women's Health.
NAACOG; The Organization for Obstetric, Gynecologic and Neonatal Nurses.
National Association of Commissions on Women.
National Association of Nurse Practitioners in Reproductive Health.
National Association of Social Workers.
National Black Child Development Institute.
National Coalition for Cancer Survivorship.
National Council of Jewish Women.
National Council of Senior Citizens.
National Council on the Aging.
National Displaced Homemaker's Network.
National Education Association.
National Family Planning and Reproductive Health Association.
National Institute for Women of Color.
National Organization for Women (NOW).
National Women's Health Network.
National Women's Health Resource Center.
National Women's Law Center.
National Women's Party.
National Women's Political Caucus.
Older Women's League.
Planned Parenthood Federation of America.
Service Employees International Union.
Society for Advancement of Women's Health Research.

THE BREAST CANCER COALITION,
New York, NY, March 25, 1992.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the Breast Cancer Coalition, I urge you to support final passage of the NIH Reauthorization bill, H.R. 2507.

As you may know, the Breast Cancer Coalition is a grassroots advocacy effort created to focus the nation's attention on the breast cancer epidemic. The Coalition has been joined by more than 140 organizations, representing several million patients, professionals, women, their families and friends. Coalition members include cancer support, information, and service groups, as well as women's, consumer health, and provider organizations.

The Breast Cancer Coalition Research Task Force held hearings last month in which leading researchers in prevention and epidemiology, basic science and clinical science presented the priorities in research. From the hearings, the task force concluded that an increase of $300 million could be spent effectively for breast cancer research. Therefore, the additional $300 million in the NIH Reauthorization bill is necessary for breast cancer research.

Because 181,000 women will be diagnosed with breast cancer this year, and because 46,000 women will die from breast cancer this year, the victims and their families need support in Congress more than ever.

We urge you to vote for final passage. Thank you.

Sincerely,

JOANNE HOWES,
Chair, Federal Public Policy Task Force, Breast Cancer Coalition.

THE BREAST CANCER COALITION—A NATIONAL ADVOCACY EFFORT

ORGANIZATIONS JOINING THE BREAST CANCER COALITION

Adelphi Breast Center Support Program, Garden City, NY.
American Cancer Society, National Legislative Office, Washington, DC.
American Indian Health Care Association, St. Paul, MN.
Arm-in-Arm, Baltimore, MD.
Bay Diagnostic Center for Women, Bay City, MI.
Beth Israel Medical Center, New York, NY.
Bosom Buddies, Chesapeake, VA.
Breast Cancer Action Group, Burlington, VT.
Breast Health, Providence, RI.
Alta Bates-Herrick Comprehensive Cancer Center, Berkeley, CA.
American Federation of State, County & Municipal Employees, Washington, DC.
Amoena Corporation, Marietta, GA.
Bass & Howes, Washington, DC.
Baylor-Komen Breast Centers, Dallas, TX.
Bosom Buddies, Jacksonville, FL.
Breast Cancer Action, San Francisco, CA.
Breast Care Center, Taylor Hospital, Springfield, PA.
Breast Health Institute, Philadelphia, PA.
Breast Health Network of Western NY, Buffalo, NY.
Breast Treatment Associates, Dallas, TX.
California Coalition of Nurses Practitioners, Ukiah, CA.
Cancer Care, Inc., New York, NY.
Cancer Guidance Institute, Pittsburgh, PA.
Centers for Disease Control-CCDPHP, Atlanta, GA.
Charlotte Organization for Breast Cancer Education, Charlotte, NC.
Clinical Gynecology, Inc. and Breast Diagnostics, Warsaw, IN.
Comprehensive Breast Center, Rush Presbyterian Medical Center, Chicago, IL.
Comprehensive Cancer Center (Kendall), Miami, FL.
Dana Farber Cancer Institute, Department of Cancer Genetics, Boston, MA.
Breast Imaging, Massachusetts General Hospital, Harvard Medical School, Boston, MA.
Burlington Breast Cancer Support Services, Burlington, Ontario Canada.
CAN ACT, Brooklyn, NY.
Cancer CareCenter, Southside Medical Center, Youngstown, OH.
Center for Women Policy Studies, Washington, DC.
Centocor, Inc., Malvern, PA.
Choices in Health Care, Petaluma, CA.
Comprehensive Breast Center, Robert Wood Johnson Medical School, New Brunswick, NJ.
Comprehensive Cancer Center at JFK Medical Center, Atlantis, FL.
Comprehensive Cancer Research Group Inc., Miami, FL.
DES Action USA, Oakland, CA.
Desert Hospital, Breast Wellness Program, Palm Springs, CA.
Emory University School of Public Health, Atlanta, GA.
Faulkner Breast Centre, Jamaica Plain, MA.
Fox Chase Cancer Center, Norristown, PA.
Greater Washington Coalition for Cancer Survivorship, Bethesda, MD.
Johanna's On Call To Mend Esteem, Albany, NY.
Life After Cancer/Pathways, Asheville, NC.
Long Beach Memorial Breast Center, Long Beach, CA.
Macomb Breast Center, Warren, MI.
Midland Community Cancer Services, Midland, MI.
Montclair Breast Center, Montclair, NJ.
Desert Hospital Comprehensive Cancer Center, Palm Springs, CA.
Factor's, Tampa, FL.
Feminist Majority Foundation, Boston, MA.
Georgetown University Hospital, Washington, DC.
Holy Cross Hospital Breast Care Services, Salt Lake City, UT.
"Just Us", Miami, FL.
Linda Creed Foundation, Philadelphia, PA.
Louise Southgate Women's Center, Southgate, KY.
Magee-Womens Hospital, Diagnostic Imaging, Pittsburgh, PA.
Monmouth Medical Center, Long branch, NJ.
Mt. Sinai Comprehensive Breast Center, Miami Beach, FL.
My Image After Breast Cancer/Y-ME, Alexandria, VA.
National Alliance of Breast Cancer Organizations (NABCO), New York, NY.
National Association of Women's Health Professionals, Evanston, IL.
National Coalition for Cancer Survivorship, Albuquerque, NM.
National Coalition of Feminist and Lesbian Cancer Projects, Washington, DC.
National Gay & Lesbian Task Force, Washington, DC.
National Women's Health Network, Washington, DC.
New England Deaconness Hospital, Radiation Therapy Department, Boston, MA.
New York University Medical Center, Department of Radiology/Breast Imaging, New York, NY.
NY Metropolitan Breast Cancer Awareness Partnership, Bohemia, NY.
Parkway Regional Comprehensive Cancer Center, N. Miami Beach, FL.
N.D. State Department of Health, Division of Health Promotion & Education, Bismark, ND.
National Association for Female Executives, Washington, DC.
National Coalition for Cancer Research, Washington, DC.
National Coalition for Cancer Survivorship, Ross, CA.
National Council of Catholic Women, Washington, DC.
National Lymphedema Network Inc., San Francisco, CA.
Nevada Breast Center, Las Vegas, NV.
New York Medical College, Institute of Breast Diseases, Valhalla, NY.
North Carolina Equity, Raleigh, NC.
Oncology Nursing Society, Pittsburgh, PA.
Pavillion Radiology Center, Owings Mills, MD.
Queen's Medical Center, Honolulu, HI.
Saint Mary's Breast Diagnostic and Education Center, Grand Rapids, MI.
Save Our Selves, San Francisco, CA.
SHARE, New York, NY.
St. Francis Hospital and Medical Center, Hartford, CT.
St. Johns Mercy Cancer Center, St. Louis, MO.
Strang Cancer Prevention Center, New York, NY.
Taylor Hospital Breast Care Center, Springfield, PA.
The Breast Care Center of Orange County, Orange, CA.
The Cancer Institute of New Jersey, New Brunswick, NJ.
The Mammatech Corporation, Gainsville, FL.
Rose Kushner Memorial Fund, Beverly Hills, CA.
Salick Health Care, Los Angeles, CA.
Scottsdale Memorial Hospital, Laboratory, Scottsdale, AZ.
Share & Care Breast Cancer Support Group, Garland, TX.
St. Francis Hospital and Medical Center, Multidisciplinary Breast Clinic, Hartford, CT.
St. Vincent Hospital & Medical Center, Cancer Program, Portland, OR.
Susan G. Komen Breast Center, Peoria, IL.
Tennessee Breast Center, Inc., Maryville, TN.
The Breast Center at Women & Infants Hospital, Providence, RI.
The Johns Hopkins Oncology Center, Baltimore, MD.
The Mary-Helen Mautner Project for Lesbians with Cancer, Washington, DC±.
The Union Institute Center for Women, Washington, DC.
Tufts-New England Medical Center Hospital, Boston, MA.
University of Maryland Cancer Center, Baltimore, MD.
Vital Alternatives, Sunrise, FL.
Westchester Mammography, Rye, NY.
Women's Breast Center, Sant Monica, CA.
Women's Cancer Task Force, San Francisco, CA.
Women's Community Cancer Project, Boston, MA.
Y-ME Bay Area Breast Cancer Network, Saratoga, CA.
Y-ME of the Berkshires, Lee, MA.
YWCA-Encore Women's Health Promotion Program, Minneapolis, MN.
Thomas Jefferson University Hospital, Philadelphia, PA.
United Food and Commercial Workers, Washington, DC.

Virginia Breast Cancer Foundation, Richmond, VA.

Vital Options, Studio City, CA.

Wisconsin Division of Health/ECDE, Madison, WI.

Women's Cancer Resource Center, Berkeley, CA.

Women's Center, Meriter Hospital/Capitol, Madison, WI.

Women's Diagnostic Breast Center, Richardson, TX.

Y-ME National Organization for Breast Cancer Information and Support, Homewood, IL.

YWCA of the USA, Washington, DC.

THE UNIVERSITY OF IOWA,
Iowa City, IA, March 20, 1992.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I am pleased to respond to your request for my opinion on the constitutionality of section 202(b) of H.R. 2507, 102d Cong., 2d Sess. (1991). That subsection prohibits the Secretary of Health and Human Services from withholding funding for research on ethical grounds unless the Secretary convenes an advisory board, as described in that subsection, and a majority of that board recommends such withholding. Board members are to be appointed by the Secretary, and shall serve "for the life of the Board" (210 days from the determination that a board shall be convened), unless, pursuant to your proposed floor amendment, the Secretary shall remove a member "for neglect of duty or malfeasance or for other good cause shown."

Section 202, if enacted, would be constitutional. Its delineation of the Secretary's administrative authority and its provisions for the appointment and removal of advisory board members pose no separation of powers difficulties.

At the outset, there is clearly no constitutional problem with Congress delegating to the Secretary limited authority to withhold otherwise authorized research funding. Although the authority to "provide for the . . . general Welfare of the United States" through public spending is explicitly congressional, art. I, §8, ¶1, section 202 represents an entirely conventional delegation of authority to an executive officer to implement Congress's power pursuant to specified criteria. Cf. *Buckley* v. *Valeo*, 424 U.S. 1 (1976), upholding criteria under which Congress authorized public spending for presidential campaigns and nominating conventions. Unlike a legislative veto, Congress' *ex ante* specification of the limited circumstances in which delegated authority may be exercised does not impermissibly intrude into executive decision making. The executive has no inherent power to fund medical research apart from the authority that Congress delegates.

Because decisions by the advisory boards contemplated by section 202 would bind the Secretary, board members are "officers of the United States" in the constitutional sense. Id. at 126, 132. They must thus be appointed in some manner specified by art. II, §2, ¶2 of the Constitution. That paragraph explicitly authorizes Congress to vest "in the Heads of Departments" authority to appoint such "inferior Officers" as Congress deems proper.

The Supreme Court recently construed Congress' authority to vest appointment powers regarding inferior officers in *Morrison* v. *Olson*, 487 U.S. 654 (1988), upholding Congress' decision to vest the appointment of independent counsel in the U.S. Court of Appeals for the District of Columbia Circuit. Not only does Morrison support a broad literal reading of art. II, §2, ¶2, but comparing independent counsel to ethics advisory board members unambiguously confirms the status of the latter as "inferior officers." The only respect in which such board members seem other than subordinate to the Secretary is that their support for withholding funds on ethical grounds is necessary to authorize the Secretary's action. Yet, the Court regarded independent counsel as "inferior officers" although their capacity to intrude on the discretion of a cabinet officer, through a subpoena or even a prosecution, is obviously greater. Moreover, the scope and duration of the board members' functions is narrower than that of independent counsel and, unlike independent counsel, board members have the capacity to affect the decision making of only the one superior officer authorized to appoint and, within limits, to remove them. If "independent counsel" are "inferior officers," then ethics advisory board members are undoubtedly so.

The one limitation noted in Morrison to the literal scope of Congress' powers under art. II, §2, ¶2, is that, irrespective of the breadth of that paragraph, Congress may not vest appointments authority in a way that poses a constitutional "incongruity." Id. at 676. Morrison does not elaborate with examples, but presumably, the Court has in mind that Congress may not vest appointment authority in ways that disable the President in the discharge of inherent article II functions. For example, the judicial appointment of the Joint Chiefs of Staff would seem constitutionally incongruous because of the commander-in-chief power. There might also be certain "inferior officers" so essential to the President's powers of treaty negotiation or military command that he must control their appointment as well.

As noted above, however, the Board's decisions regarding public spending for health research do not implicate any inherent presidential authorities. Article II, of course, does not vest the President either with power to spend for public health research or general power to withhold congressionally authorized funding on ethical grounds. Although some Presidents have claimed seemingly plenary constitutional power to impound appropriated funds, the executive abandoned that position in the one Supreme Court case that might have adjudicated it, *Train* v. *City of New York*, 420 U.S. 35 (1975), and the clear weight of authority is against the existence of such power. Cf. *City of New Haven* v. *United States*, 809 F.2d 900 (D.C. Cir. 1987).

Morrison also answers any potential challenge to your proposed amendment governing the removal of ethics advisory board members. Under the Ethics in Government Act of 1978, independent counsel are subject to removal only by the Attorney General and only for grounds essentially identical to those specified in your proposed amendment. The Court indicated that such limited removability would be unconstitutional only if it disabled the President in the fulfillment of his constitutional role. The Court then upheld the limited removability of independent counsel because it did not undermine executive authority "to assure that the counsel is competently performing his or her statutory responsibilities in a manner that comports with the provisions of the Act." 487 U.S. at 692. Because the President's ability to oversee the executive effectively is even less implicated by the NIH reauthorization than by the Ethics in Government Act, the same conclusion would follow a fortiori for your proposed removability provision. The limited removability of advisory board members would not undermine the President's capacity to discharge his functions and would therefore be constitutional.

I have not used this letter to parse the pre-Morrison case law on appointments and removals because Morrison squarely governs, it is written more clearly than earlier decisions, and analysis of the earlier decisions would lead, in any event, to the same result. If, however, you would like additional information or amplification of any point I have made, please do let me know.

I hope this analysis proves helpful to you.

Sincerely,

PETER M. SHANE,
Professor of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, IL, March 23, 1992.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: This will respond to your request for my views on the constitutionality of HR 2507, section 202, with the suggested floor amendment. I believe that with this amendment, section 202 would be constitutional.

In brief, section 202 would create an ethics board to help with grant decisions of the Secretary of HHS. The board would operate under the Secretary. With the suggested amendment, it would be subject to his supervision and control.

Section 202 raises two main constitutional issues. The first issue arises under the appointments clause. Under that clause, Congress has the power to vest the appointment of inferior officers in the heads of departments. See Morrison v. Olson, 487 US 654 (1988). If the members of the ethics board are "inferior officers," then they may be appointed by the Secretary. There are some unanswered questions about who qualifies as a inferior officer. But the board members would almost certainly count as inferior officers if they are removable by the Secretary for cause. See id., concluding that the independent counsel is an inferior officer in part for this reason. Since the proposed floor amendment would make them removable for cause, section 202, as amended, would be unobjectionable under the appointments clause.

The second issue relates to removal. Under the Constitution, most high-level executive branch employees must be removable by the President "at will." See Myers v. United States, 272 US 52 (1926). It is also clear that completely independent policymakers would raise extremely hard constitutional questions. In Morrison v. Olson, however, the Court upheld the independent counsel act in significant part on the ground that the Attorney General retained the authority to dismiss the independent counsel for cause. The Court thus suggested that there is no constitutional problem so long as lower-level federal employees are subject to "for cause" control, by the President, through the chain of command. The Court did not find it necessary to explain exactly what "cause" or "good cause" means. I assume that the same would be true here.

The Morrison case suggests that with the proposed amendment, section 202 would be permissible. The members of the ethics board would be removable on the same basis as the independent counsel. (Note also that

they would not be as high-level, as traditionally executive, or as effectively free as the independent counsel is; and in these important respects section 202 presents a far easier question than that in Morrison.) Indeed, the ethics board would have some of the characteristics of ordinary civil servants, who are also removable only for cause. Many civil servants, with "for cause" protection, exercise discretionary, policymaking functions, and this has not been thought unconstitutional. See Myers, supra. I believe that as amended, the limit on the removal power is therefore acceptable.

The requisite supervisory power probably follows from the existence of the requisite removal power, though this issue has never been litigated. That is: As a general rule, it may be constitutionally necessary that the President, through his agents, have some supervisory authority over executive branch officials. He must ordinarily have some authority to consult with and influence them, as well as to fire them "for cause." But if there is some removal power, there is also, as a matter of statutory interpretation, supervisory power as well. See Myers, supra. Thus section 202, as amended, would confer the necessary supervisory power. (This seems an implication of Morrison v. Olson, supra, as well.)

No serious problem is raised by the various reporting requirements. There is no constitutional obstacle to a congressional effort to require executive branch officers to make reports to members of Congress. No executive privilege issue appears in this context.

I should add that the issue would be quite different if the floor amendment were not added. If the board's members could not be removed for cause—if they were essentially free agents—we would be faced with a difficult and unanswered constitutional issue. It would be harder, in that event, to say that the board's members are "inferior officers," and hence the appointments issue would be far more difficult. It would also be harder to fit the removal limitation within Morrison v. Olson and the civil service cases. Without the amendment, the Secretary of HHS would be subject to an effective veto by an entity uncontrolled by officers within the executive branch.

I therefore suggest that the suggested amendment is extremely important to avoidance of constitutional doubts. But with the amendment, the bill is constitutional.

With best regards.

Sincerely,

CASS R. SUNSTEIN,
Karl N. Llewellyn Professor of Jurisprudence.

TITLE III OF THE NIH REAUTHORIZATION

Mr. MURKOWSKI. Mr. President, I rise today with concerns about title III of H.R. 2507, as to its possible unintended effects on the outstanding research and development activities of the Department of Veterans Affairs.

I favor enactment of the NIH reauthorization and will vote for final passage. However, I have been alerted today to the possibility that title III—appropriately aimed at improving the health status of American women by directing so-called gender parity in NIH-authorized research grants and mandating other actions associated with research in women's health—may cause harm to the Department of Veterans Affairs' research and development programs.

Strict application of the gender parity requirements of title III to the VA may eliminate critical funding for VA research and development programs because the VA provides services to a health care population that is 95 percent male.

SUPPORT OF GOALS OF TITLE III

Let me make clear to my colleagues, I strongly support the goals of title III, but unless the VA is granted some flexibility in implementing this title, needed research dollars will be diverted away from the VA and the health care needs of America's veterans will suffer. I know this is not the intent of the authors of the legislation and I hope this language can be modified in conference.

VA: A RECORD OF EXCELLENCE IN HEALTH RESEARCH

Mr. President, the VA has a record of excellence in health research. Researchers of the Department of Veterans Affairs invented the technology we now call the CAT scanner; developed the antibiotics that eradicated tuberculosis; invented kidney dialysis and kidney transplant technologies; and perfected a number of psychotropic drugs, including those that are used to treat schizophrenia. Two VA researchers were awarded the Nobel prize in medicine. VA research and development is a treasure and a national resource of the highest order, whose contributions to curing disease and improving our health status are immeasurable.

The Department of Veterans Affairs is a major research participant in the NIH competitive-grants program. Researchers in the VA system in this fiscal year have won competitive NIH research grants to such an extent that the VA's appropriated levels for research and development have been substantially supplemented—in fact, fully 41 percent of VA's research funds come from NIH grants. As we all know, competitively awarded research grants offer great hope in solving the complex dilemma of human disease. In the case of VA research, much of which is supported by NIH grants, these efforts could make major progress in discovery about aging, mental health, spinal cord and brain injury, heart diseases, cancers, and many other human health concerns. Mr. President, I would not want the National Institutes of Health, the Secretary of Health and Human Services, or the Secretary of Veterans Affairs to conclude that the Senate's passage of the NIH reauthorization measure in its current form intends to exclude VA research from future NIH grants.

VA POPULATION PREDOMINANTLY MALE

Mr. President, it is a fact of history and tradition that Armed Forces are predominantly male. Today we see the military services entering a transition with women playing a greater role than ever before. I support this transition and I would predict this role will grow in the future. But the VA health-care system, the underlying clinical activity for VA health-related research and development, is a system that necessarily devotes the vast majority of its resources today to the care of the eligible veteran population—which is 95 percent male. VA's research efforts reflect the characteristics of its patient-care programs and the patients they serve; thus, most VA research relies on male patients as research participants. Mr. President, out of a total veteran population of 27 million, only 1.2 million are female. I am sure this will change in the future, but it is a fact at this time.

NEED FOR FLEXIBILITY

A strict interpretation of the requirements for gender parity in title III of this measure might cause NIH to reject VA research proposals without considering them on their merits. Such an outcome would be terrible for America's veterans. Based on the number of NIH grants presently awarded, Mr. President, VA research proposals are meritorious. If this environment were to change, however, some of the best research scientists and physicians in our country, those now participating in the NIH grant program, will leave VA. If VA loses its research base, it loses a base of excellence for patient care, a base of excellence for its academic relationships with the nation's schools of medicine and other health professions. I am certain, Mr. President, that such effects are not intended by this body.

Mr. President, title III does contain some built-in flexibility. The Director of NIH is permitted to issue guidelines associated with exceptions to the general rule of gender parity for all NIH grants. If this title is not amended in conference to clarify VA's participation, I would urge the Director of NIH to take into account the special nature of the Department of Veterans Affairs and the patients it serves in formulating these guidelines. Otherwise, vital research efforts in the Department of Veterans Affairs may be lost to the nation.

CONCLUSION

Mr. President, I support title III of this bill, but I would urge my colleagues to provide much-needed flexibility in applying this title to research efforts in the VA. Without this flexibility, we risk destroying one of America's greatest health-research assets, the Department of Veterans Affairs.

Mr. President, I ask unanimous consent an explanatory statement be printed in the RECORD.

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

EXPLANATORY STATEMENT—PROPOSED MURKOWSKI AMENDMENT TO H.R. 2507

Section 301 of the substitute amendment to H.R. 2507 adds provisions to the Public Health Service Act to provide for the inclu-

sion of women and minorities in all clinical research funded by the National Institutes of Health.

The requirements could be applied to VA research projects funded by NIH. NIH furnishes 41% of current VA health-research funding, through competitive grants. An application of the new rules in ignorance of the fact that 95% of VA patients are males would jeopardize NIH-sponsored VA research projects because VA often lacks women veterans to serve as research subjects.

The proposed amendments would remedy the situation, expressly providing that the new requirements associated with women do not apply to research conducted pursuant to authority in title 38, United States Code, VA's authorizing statute. The requirement of Section 301 of minorities to be included in such research projects is unaffected by this amendment.

Section 4860 of the Public Health Service Act, as added by section 301 of H.R. 2507 as amended, is amended by redesignating paragraph (2) of subsection (b) as paragraph (3) and by inserting a new paragraph (2) to read: "(2) The requirement regarding women established by subsection (a) shall not apply to research conducted pursuant to authority in title 38, United States Code."

WOMEN'S HEALTH INITIATIVES

Mr. GRASSLEY. Mr. President, I rise today to address one very important aspect of the NIH reauthorization bill and that is the women's health initiatives contained in the bill.

Historically, there has not been enough attention paid to women's health issues. This bill contains a number of very important provisions which address a variety of topics relating to women's health including aggressive initiatives to combat the diseases that primarily affect women, such as osteoporosis, breast cancer, and cancers of the reproductive system. This bill also requires the inclusion of women as subjects in medical research and clinical trials.

Over the past several decades, significant progress has been made in many areas of women's health. For example, cervical cancer mortality has been reduced by more than 70 percent over the past 40 years as a result of early screening and diagnosis.

However, this positive trend is not matched by most other cancers that afflict women. In fact, for some cancers, the rates are increasing, not decreasing. One such glaring example is breast cancer. Over the last 20 years, the risk of developing breast cancer has grown. In 1960, 1 woman in 14 could expect to develop breast cancer in her lifetime. Today, a women's risk has increased to one in nine. This means that there will be 180,000 newly diagnosed cases of breast cancer this year.

I am painfully aware of this devastating disease as a result of my wife, Barbara's personal victory over breast cancer just a few years ago. We, however, were fortunate. Sadly, many others are not as fortunate and that is why we must focus upon this terrible disease.

Although incidence rates have been increasing over time, early detection and advances in treatment have kept mortality rates fairly stable. However, despite these advances, we still do not know the causes or cures for this disease, and even less is known about how to prevent it from developing. Further research is needed to identify those at risk and to cure the majority of women who do not benefit from early detection.

The provisions contained in this bill address these issues in a number of ways. Specifically, the bill allocates $55 million for basic research into the etiology and causes of breast cancer, $25 million for clinical research, prevention and education programs, and $75 million for research and development programs.

While breast cancer is the leading causing death for women, ovarian cancer is the fourth leading cause of death according to the American Cancer Society. The various types of reproductive cancers occur at alarming rates. One in seventy women will contact ovarian cancer during her lifetime and 1 in a 100 will die from the disease. This is primarily because ovarian cancer is difficult to diagnose since its symptoms are often silent or appear late in development. The consequences of a delayed diagnosis are traumatic and often result in the removal of the ovaries or death. Further research is needed to develop methods of earlier detection and treatment. This bill recognizes the tragedy of cancers of the reproductive system by almost doubling the current effort in research of ovarian and other gynecological cancers.

While this bill gives great attention to the leading causes of cancer in women, it also focuses upon an area that I have long been involved in, and that is osteoporosis. Last session, I introduced the Osteoporosis and Related Bone Disorders Research, Education and Health Services Act of 1991. I worked with members of the Labor Committee to include these provisions in the NIH reauthorization bill and I am encouraged that they did.

Osteoporosis is predominantly a women's disease. It is a crippling, debilitating disease that results in thin, weak, and brittle bones that make a person highly susceptible to bone fractures. These fractures occur in the spine, resulting in the familiar dowager hump, the wrists and hip. These bone fractures lead to lost mobility, increased institutionalization, and even death. According to the National Osteoporosis Foundation, 20 percent of those with hip fractures will not survive more than 1 year after the fracture.

Despite the prevalence of this disease and its consequences, there are many unanswered questions and that is why I introduced my legislation. I am pleased that this bill directs attention to osteoporosis. Provisions of the NIH bill enhance the research effort by three designated institutes on osteoporosis, Paget's disease, and other related bone diseases.

Although there are a number of diseases that afflict only women, women are at risk for many diseases that also affect men. For instance, heart disease and lung cancer are also leading causes of death for women. An estimated 146,000 women will die of lung cancer in 1992 and more than twice as many women will die from coronary heart disease.

As we examine the course of these diseases in women, we realize that much of the research on these diseases involved only men. Today, many medical therapies are based on studies conducted exclusively on men. Many of these studies fail to take into account the physiological differences between men and women. For instance, fluctuations in hormone levels can affect the course of disease and the reaction to treatment. Heart disease is a glaring example where research was conducted almost exclusively on men and where physiological differences between men and women are important and cannot be ignored.

For example, exclusively male research on heart disease disregards such coronary risk factors unique to women as oral contraceptive use, hysterectomies, menopause, and post menopausal hormone replacement therapy. Despite the fact that heart disease ranks as the number one cause of death among women, vast blocks of research have excluded women, thus disregarding gender based differences.

Several provisions contained within the bill seek to address this inequity. The bill requires the inclusion of women, as well as minorities, in medical research and clinical trials supported by NIH. However, women cannot merely be included. The studies must be designed to permit a valid analysis of the gender based differences resulting from the variables used in the study. These findings can then be used to distinguish the differences between men and women and any subsequent changes in medical treatment.

Dr. Bernadine Healy's appointment as Director of NIH and the 1990 establishment of an Office of Research on Women's Health were important steps forward. The women's health initiatives contained within this bill are also important steps. It is my hope that these efforts will provide our daughters and granddaughters with more hope for a healthy future.

NIH AND WOMEN'S HEALTH

Mr. GLENN. Mr. President, I rise today to express my support for H.R. 2507, the National Institutes of Health Reauthorization Act of 1992. This legislation strengthens our Nation's commitment to excellence in biomedical research, and it seeks to reverse the trend of the 1980's when funding increases for the National Institutes of

Health [NIH] barely kept pace with inflation. As I have advocated during my years in the Senate, I continue to believe that we should be giving our highest priority to Federal funding for medical research, treatment, and education programs.

H.R. 2507 also takes an important step toward research excellence by outlawing the administration's ban on fetal tissue transplantation research. Medical researchers believe that millions of Americans who are suffering from Alzheimer's disease, Parkinson's disease, diabetes, and other diseases could be treated or cured through fetal tissue transplantation. I support NIH funding for this research, along with the safeguards contained in H.R. 2507 to ensure that this important research does not encourage abortion.

I am very pleased that major provisions of two bills I cosponsored—the Women's Health Equity Act; and the Osteoporosis and Related Bone Disorders Research, Education, and Health Services Act—are included in the NIH reauthorization bill we are considering today. For too long, women's health issues have not been given as much attention as they deserve, and most research on diseases affecting both women and men is done only on men. The National Institutes of Health, at the urging of Congress and under the leadership of its first woman Director—Dr. Bernadine Healy from my home State of Ohio—is making changes to address these problems.

The bill we are considering today expands our commitment to improving the health of women by:

Requiring the inclusion of women and minorities as subjects in clinical research conducted or supported by NIH;

Providing statutory authority for the newly created Office of Research on Women's Health;

Providing for a Women's Health Clinical Research Advisory Committee and a data bank on women's health research;

Directing the National Institute on Aging to conduct research into the aging processes of women;

Establishing a research program on breast cancer and cancers of the reproductive system of women with increased funding, in addition to research already being conducted by the National Cancer Institute;

Creating a program to support five centers for research and training on contraception and infertility; and

Establishing a research program on osteoporosis, Paget's disease, and related bone disorders.

I would like to briefly highlight osteoporosis which is the most common bone disease affecting older Americans, particularly older women. Osteoporosis is characterized by a gradual and initially painless disease in the amount of bone tissue. As osteoporosis progresses, the bones become weaker and more porous, which makes them increasingly susceptible to fractures. The condition can affect any bone in the body, but the most common fracture sites are the hip, spine and wrist.

The number of people afflicted with osteoporosis is overwhelming. Today, at least 24 million Americans have some degree of osteoporosis. At least 1.3 million fractures a year—including 250,000 hip fractures—are attributable to this condition. Beyond the tremendous emotional and physical toll, osteoporosis has greatly increased our health care bill, costing over $10 billion annually in health care services and lost income. Osteoporosis, with its associated fractures, is an enormous public health problem; and there is no doubt that the emotional, physical and financial costs related to osteoporosis will continue to increase as our population ages.

Last year Senator GRASSLEY and I introduced legislation to authorize an additional $62.5 million for further research into the diagnosis, prevention, and treatment of osteoporosis. The NIH bill we are considering today authorizes an additional $40 million for expanding and intensifying research on osteoporosis, Paget's disease, and related bone disorders. Combating osteoporosis—through expanded research, broad dissemination of information about osteoporosis, and providing Medicare coverage of bone mass measurements to identify and treat individuals at greatest risk of fractures due to osteoporosis—will continue to be a high priority for me.

I commend Senator KENNEDY, chairman of the Labor and Human Resources Committee, for bringing forth this comprehensive legislation to strengthen our Nation's commitment to basic medical research, and to ensuring that the results of this research are available to benefit all Americans. I urge my colleagues to join me in passing H.R. 2507, the National Institutes of Health Reauthorization Act of 1992, by an overwhelming and veto-proof majority.

Mr. DOMENICI. Mr. President, I rise today to speak to the primary issue of contention in the NIH reauthorization act, fetal tissue research. On Tuesday, the Senate voted to table an amendment offered by my friend and the floor manager for this bill, the distinguished Senator from Utah. His amendment would have provided for the establishment of a physician and hospital registry and fetal tissue bank for fetal tissue that had been obtained from ectopic pregnancies and spontaneous abortions.

The amendment was an effort to allow fetal tissue research to continue without allowing the use of tissue that had been obtained from elective abortions. I certainly understand his concerns in this regard and I applaud his efforts. If I thought that this bill would somehow promote elective abortions I, too, would have opposed it, but frankly, I don't believe that is the issue we are dealing with here.

The medical research community has reason to believe that the use of fetal tissue could provide the link that will allow us to obtain huge advances in our search for cures to a number of debilitating diseases such as diabetes, Alzheimer's, and one that many of us here have witnessed the ravages of personally in our friend from Arizona, Mo Udall, Parkinson's disease. There is also a possibility that it could play a role in helping us in our search for the cure of the diseases that plague the severely mentally ill. While no research is certain, there appear to be enough positive developments in this type research involving fetal tissue that we should allow it to continue.

Unfortunately, the amendment offered by the Senator from Utah would have greatly hindered the continuance of this promising research. It is true that the amendment would have been beneficial in its establishment of a national registry and data bank to allow us to take full advantage of the tragedy of ectopic pregnancies and spontaneous abortions that occur to many women throughout this country.

However, it is unclear that the registry would have been a worthwhile effort because it is disputed whether or not enough usable tissue could have been retrieved from these sources. Even if we found that enough tissue could be obtained, there has not been enough study for us to know whether or not that tissue would be free from infection and bacteria and suitable for use.

Another reason for my support of the committee substitute for the NIH reauthorization act, is the current lack of regulation that exists within the private research community regarding fetal tissue research. By allowing the passage of the bill as it is currently written, we put in place regulations that will enable us to control illicit activity and eliminate such behavior in the private as well as public sector.

My views regarding the availability of abortions on demand are quite well known. As I stated earlier, if I truly believed that this was an issue that would result in an increase in the number of abortions that take place in this Nation, I would have voted in favor of Senator HATCH'S amendment.

However, this is an issue regarding freedom of research in the hopes of obtaining a cure for many of the destructive diseases that ruin the lives of millions of people and families. It is for this reason, Mr. President, that I voted against the amendment offered by my friend, the Senator from Utah.

Mr. BIDEN. Mr. President, being ranked No. 1 is often a proud honor.

However, my State of Delaware has a No. 1 ranking that we would just as soon not have and are working hard to lose. Delaware has the unwanted distinction of leading the Nation in deaths from breast cancer. But this is not an anomaly for our region. The top 10 States—including the District of Columbia—for breast cancer mortality are all in the Northeast.

Breast cancer is a devastating disease—one that attacks without impunity, without regard to family medical history, and without regard to socioeconomic status. The simple fact is no woman in America is immune. In the last 10 years, the number of women diagnosed with breast cancer has increased more than 33 percent each and every year. Today, nearly one in nine American women will develop the disease during her lifetime. This year alone, 180,000 women will be diagnosed with breast cancer and more than 46,000 will die of the disease.

While we know what is happening—we see the serious toll breast cancer is taking on our mothers, our wives, and our daughters—we do not fully understand why. Our knowledge of breast cancer is not sufficient to explain the increasing number of breast cancer cases.

There are plenty of theories—a lack of sunshine, high levels of air pollution, and low intakes of vitamin D have all been suggested as causes of breast cancer. But, the truth is, no one really knows what causes the disease or why women in the Northeast face such high risks. And, this lack of knowledge of the causes of breast cancer is the major roadblock to finding a cure for the disease.

The legislation before us—the National Institutes of Health Reauthorization Act—includes important provisions for women's health in general and breast cancer in particular. The bill provides permanent, statutory authority to the Office of Research on Women's Health within the NIH and creates a national data system for research on women's health. The funding authorization for breast cancer research at the National Cancer Institute would be increased to $250 million in fiscal year 1993. This includes both basic research on the disease as well as the establishment of at least six breast and prostate cancer research centers around the country. If fully funded in fiscal year 1993, we would nearly double our financial commitment to finding a cure for breast cancer. I commend Senator KENNEDY for including these important provisions on women's health in the bill.

However, the provisions of the bill take us only part way to our goal. Finding the causes of breast cancer is vital to discovering a cure for the disease. But that will not represent a complete understanding—and will, I believe, cause us to fall short in our fight for a cure. Not only is there a gap in our knowledge of what causes breast cancer, there is an even bigger gap in our knowledge of why women in the Northeast are dying from the disease in unprecedented numbers.

We know, Mr. President, that early detection and treatment of breast cancer can save 90 percent of those who have the disease. Yet, for unknown reasons, women in nine Northeastern States and the District of Columbia are dying at a higher rate. This has led experts to conclude that there is a missing element in our understanding of breast cancer, an element that early detection efforts fail to capture. We need to find out what that is—or I fear we may never really find a cure.

The amendment offered today by Senator LEAHY will expand our knowledge of this killer. The amendment, which I cosponsored, authorizes a study of breast cancer mortality in those States that have the highest rates, including the State of Delaware. We need to know why women are both victimized and killed by the disease. This amendment will ensure that we better study and better understand the breast cancer problem in America.

I want to recognize the leadership on this issue by Senator LEAHY, and I urge my colleagues to support the amendment.

The PRESIDING OFFICER. Under the previous order, the committee substitute, as amended, is agreed to.

The question is on the engrossment of the committee substitute, as amended, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read for the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

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

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Illinois [Mr. DIXON] and Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. LUGAR] is necessarily absent.

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

The result was announced—yeas 87, nays 10, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—87

Adams	Boren	Burdick
Akaka	Bradley	Byrd
Baucus	Breaux	Chafee
Bentsen	Brown	Coats
Biden	Bryan	Cochran
Bingaman	Bumpers	Cohen
Conrad	Jeffords	Packwood
Cranston	Johnston	Pryor
D'Amato	Kassebaum	Reid
Danforth	Kasten	Riegle
Daschle	Kennedy	Robb
DeConcini	Kerrey	Rockefeller
Dodd	Kerry	Roth
Dole	Kohl	Rudman
Domenici	Lautenberg	Sanford
Durenberger	Leahy	Sarbanes
Exon	Levin	Sasser
Fowler	Lieberman	Seymour
Garn	Lott	Shelby
Glenn	Mack	Simon
Gore	McCain	Simpson
Gorton	McConnell	Specter
Graham	Metzenbaum	Stevens
Grassley	Mikulski	Thurmond
Harkin	Mitchell	Wallop
Hatfield	Moynihan	Warner
Heflin	Murkowski	Wellstone
Hollings	Nickles	Wirth
Inouye	Nunn	Wofford

NAYS—10

Bond	Gramm	Smith
Burns	Hatch	Symms
Craig	Helms	
Ford	Pressler	

NOT VOTING—3

Dixon	Lugar	Pell

So the bill (H.R. 2507), as amended, was passed.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

COMMENTS ON THE PRESIDENT'S PROPOSED AID PACKAGE FOR THE FORMER SOVIET UNION

Mr. WARNER. Mr. President, I rise to commend the President for the plan which he announced yesterday for a proposed aid package to the new States of the former Soviet Union. As my colleagues know, I have long been a supporter of aid to these new States. I believe that such aid can reduce the military threat which the United States and the entire Western World have long faced from the former Soviet Union. The President's proposed aid package holds out the prospect of being the single most important contribution that the West can make to help the new States achieve their goal of self-determination and democratic values. This is truly a historic moment, one in which the Congress and the executive branch are working in partnership. It was the spirit of partnership that was present yesterday, in the cabinet room, when the congressional leadership met with the President.

I continue to believe strongly, however, that assistance to these new States should be linked, in part, to a commitment and, eventually, demonstrated actions by those new States to reduce their strategic modernization programs to levels not exceeding their true legitimate defense requirements. The Commonwealth of Independent States need only maintain deterrent

force levels that are justified by actual threats to their individual and collective security. Indeed, if they are willing to accept our aid, they should recognize that the West is not a threat, and should not be included in any threat assessment. As it stands today, however, it is these very strategic capabilities which could be used—intentionally or unintentionally—against the United States and our allies in the future if these commitments are not fulfilled.

The President's aid program is predicted, to some degree, on the assumption that we will be able to save money in the long term in our defense budget because of the reduction of the military threat from these new States. But at the same time, the President's package, as I understand it, is not conditioned on any evidence of an actual reduction of this threat or cessation of future nuclear weapons production. I am concerned by the apparent absence of any direct linkage of U.S. national security issues with the aid in the President's proposal. Specifically, there is little, if any, consideration of how this aid should be conditioned on a commitment from these States to reduce the nuclear threat to the West.

Mr. President, last year's legislation—known as Nunn-Lugar, of which I was an original cosponsor—authorized $400 million to assist the new States in ways that would lead to a reduction of the nuclear threat to the West. This would be accomplished by providing, among other things, assistance to dismantle the weapons of mass destruction of the former Soviet Union.

Authority to use this aid under Nunn-Lugar, however, required Presidential certification of certain conditions which must first be met by any recipient of such aid. In this regard, I am on record as believing that President Bush can now certify that most potential recipients have met the six conditions stated under the Nunn-Lugar provision.

But I must caveat my statement that this certification can be made by the President. For example, Nunn-Lugar specifically states that the President must certify to Congress that the proposed recipient is committed to:

(1) making a substantial investment of its resources for dismantling or destroying such weapons;

(2) forgoing any military modernization program that exceeds legitimate defense requirements and forgoing the replacement of destroyed weapons of mass destruction.* * *

There are four other important conditions, but I would like to focus on these first two. President Yeltsin and other Russian officials have made clear statements that they intend to curtail defense procurement. President Yeltsin declared in January of this year that defense production would be reduced by some 50 percent. Further, during my trip to Moscow last month, First Deputy Prime Minister Gaidar informed me that defense procurement would be reduced by some 75 percent. These are clearly stated commitments to reduce defense spending, particularly in an area like defense procurement.

Mr. President, it is on the basis of these statements and others, that I am willing to endorse the release of the initial aid package of $400 million. However, we need to note a number of potential problems that require close monitoring and which should be considered before releasing any future aid.

Again, during my recent trip to Russia, for example, the CODEL met with President Yeltsin's Advisor for Defense Conversion, Mikhail Maley. Mr. Maley indicated that while procurement for Russian military forces would ultimately decline, during the next 3 or 4 years they would continue to produce weapon systems for the purpose of selling this equipment on the international market in exchange for hard currency.

Mr. President, I have very serious concerns about this continued production, whether for purposes of export or use within the Russian military. I am also concerned because Mr. Maley was unclear about what type of equipment would continue to be produced. For example, he did not state that ballistic missile production—systems that should clearly not be sold overseas—would cease under this proposed plan. Indeed, one could easily infer from our discussion with him that he did not rule out the possibility of continued production of ballistic missiles and continued maintenance of the Russian nuclear weapons complex.

At the same time, Mr. President, I remind my distinguished colleagues that the United States is halting production of virtually all of its strategic programs and actually converting much of its defense infrastructure to other purposes. Since the trend toward democracy in the former Soviet Union is still not immutable, it is clear that we are converting our own defense production base while the Russians are planning to maintain theirs for a number of years. If the forces of democracy do not prevail in Russia and a new totalitarian threat emerges, it will be very difficult and expensive to restore critical parts of the American military production base.

Mr. President, the second area that needs close monitoring is the continued development of strategic nuclear programs and even production of certain systems in the former Soviet Union. Recent testimony by the Director of Central Intelligence, Mr. Bob Gates, before the Senate Armed Services Committee and Senate Intelligence Committee, as well as statements by Russian officials, indicate a number of disturbing trends. For example, Russia is continuing:

Development of new ICBM and SLBM follow-on ballistic missile programs, and may be even ready to flight test some of these systems.

Production of the highly lethal SS-18, though I have been told by the Ukrainian Minister for Defense Conversion that no new orders have been placed. Nonetheless, Russia is still modernizing silos in Kazakhstan for these new—more lethal and destabilizing—SS-18 Mod 5 missiles.

Production of the SS-25 road-mobile ICBM, even though President Bush has cancelled further production of the MX as well as the MX rail-garrison program, and the small ICBM program and its mobility component.

Production of weapons-grade plutonium, even though there is no need for additional nuclear weapons materials and when the United States is virtually shutting down its nuclear weapons production complex.

The full alert of its nuclear forces, even the SS-24 railmobile system located in garrison as well as maintaining fully alert field deployments of the SS-25 road-mobile system.

The construction of its enormous deep underground nuclear warfighting shelter program. This is a massive project that is consuming enormous resources that should be spent instead on providing housing to returning Soviet military forces and to improve the civilian infrastructure. This program, above all, should be halted immediately.

Mr. President, I ask unanimous consent that three articles which have appeared in the Russian press be inserted in the RECORD. These articles provide only a few examples of the enormous size of the Russian deep-underground nuclear warfighting shelter program. It also confirms that these programs, among others, are still under construction even during these times of improved relations with Russia and the end of the cold war.

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

[From Moscow Izvestiya, Jan. 11, 1992]

CONVERSION AT ŽHELEZNOGORSK WEAPONS PLANT

(By Aleksey Tarasov and Dmitriy Khrupov)

This TAIGA CITY.—The holy of holies on the military-industrial complex which produces plutonium for arms and spy satellites and, previously, missiles as well—is located not far from the Stolba national preserve, 64 kilometers from Krasnoyarsk. Quite secret, it has had various names—"Devyatka," Krasnoyarsk-26, Zheleznogorsk. But it is most correct to refer to it as Atomgrad. There are two secret enterprises here which previously worked in harmony to forge the country's nuclear missile shield. The missile part of the shield was forged by the Scientific Production Association for Applied Mechanics (General designer—a scientist and colleague of S. Korolev, academician M. Reshetnev) and the nuclear part—the Mining-Chemical Combine (director—V. Lebedev). Now that the shield has shrunk and seems to be unnecessary, these unique enterprises have one task—to survive.

Deputy head engineer of the Mining-Chemical Combine P. Morozov, one of the pioneers of Atomgrad, says:

In conjunction with Soviet and foreign firms we intend to produce polycrystal silicon, monosilicon, and gallium arsenide. An agreement will soon be concluded with the Koreans—they will install at our site a technological line for assembling Samsung television sets. They have already manufactured experimental models that do not require isotopic illuminators. We will extract valuable components from medicinal herbs and fir trees. But in order for us to take a serious approach to these plans we will have to release working hands, which we do not have the right to do—for basic production is not being halted.

Having spent two days in the secret city and driven a car through tunnels and covered what seemed to a considerable part of the multilevel underground, going through innumerable laboratories, offices, and shops and having visited the very heart of the "kingdom of darkness"—the central reactor hall—when we returned to the light of day we found it difficult to believe the words of our guide: "You have seen barely one-twentieth of it." In the 1970's the volume of excavation of the man-made cavern was compared to that of the Moscow Metro. But here we have granite and rock. It took more than 65,000 prisoners and more than 100,000 soldiers to dig it out.

At the beginning of the seventies the atomic energy workers started thinking about what to do with the "tailings"—radioactive wastes (RAO). In 1972 they began to design the RT-2, and they started building it in 1978. Even the workers of the mining and chemical combine knew that an incredible amount of fissionable materials had been accumulated, and the reactors do not last forever. But the RT-2 would make it possible in any political climate not only to preserve the collective of the combine but also to keep the branch competitive. But in 1985 there was a sharp reduction of the financing for the project. Now the elaborate structures are being destroyed, and 200 million rubles ((R)) have been thrown to the wind. Just preserving the construction would require R30 million (in 1991 the mining and chemical combine was allotted only 1.5 million).

If one is to think seriously about the continuation of the construction of the RT-2, it will be necessary to attract foreign capital. It is clear that Russia will not be able to find the necessary sum. The South Koreans have shown an interest. They have already given us to understand that, although negotiations are not being conducted yet, they are prepared to pay a million dollars for every ton of fuel that is produced and stored at the mining and chemical combine. And in the future they will finance the construction of the RT-2 (so far only the first section is in operation). Nuclear facilities of Japan and India are being considered as possible suppliers of nuclear wastes and hard currency. The British have also expressed an interest in this project. And the leaders of the mining and chemical combine say that this is nothing like any "international waste dump."

What has not happened in the history of Atomgrad?! At the end of the fifties the military decided to place next to the reactors and radiochemical plants Krasmash (Krasnoyarsk machine building plant) as well—for producing cannons and missiles. This "delirious" fantasy of the generals was squelched by Nikita Khrushchev. When he visited the nuclear grave in 1961 he understood that should there be a nuclear attack, to put only production under ground was pointless—how many hours it could function, if a strike were delivered and the city that serves the underground destroyed?

The firm's subsequent development proceeded much more logically. They gradually changed over to designing, manufacturing, and testing spy satellites, space vehicles, special communications, and also satellites for the academy of sciences. More than one-third of the Kosmos space vehicles are the work of the skilled workers here. Today the Scientific Production Association of Applied Mechanics is the country's leading enterprise for space missile complexes for communications and television broadcasting. In this area the association's output is represented by the Molniya, Raduga, Gorizont, Ekran, Luch, and radio satellites, navigation (including the Tsikada and Glonass satellites), and Geodesy (Geoik and Etalon). Large western firms are glad to work with the Scientific Production Association. Their assessment of the items and the experimental base of the enterprise are the most enthusiastic.

But today it is hard to distinguish the problems of academician Reshetnev's firm from those of the Mining and Chemical combine. The collective of the unique space firm has changed from Kosmoses * * * to Kuznechiks. And the Kuznechiks are merely children's sports training simulators—a tubular frame with supports for the legs and springs. An enterprise capable of setting up reliable communications throughout the country is reduced to making water bottles and health gadgets.

[From Moscow Tass, Mar. 18, 1992]

SECURITY MINISTRY ON STRATEGIC UNDERGROUND OBJECTS

MOSCOW.—The Russian Ministry of Security does not intend to make information on the location and functions of underground strategic objects public as it will be a threat to "the strategic defense interests of Russia and the Commonwealth of Independent States," according to an official report issued by the ministry today.

The press-release was issued in connection with journalists' numerous requests to "acquaint them with the location and functions of underground strategic objects," as well as some newspaper publications, which, according to the ministry, "have nothing to do with the reality" and only are misinforming the public.

According to observers, several "sensational" materials have appeared in the news media on the issue over the last few weeks, including reports on a "secret metro line" allegedly linking the Moscow center with the suburbs, and a "secret underground town" near the Moscow University and so on.

With due respect for "professional interests of journalists", the ministry stated, nevertheless that "strategic defense interests of Russia and the Commonwealth do not permit to satisfy inquiries of news media on the score." Moreover, it expressed worry about actions of some journalists who "are collecting information about objects allegedly located in this or that region." The press-release says that on March 18 "a well-known publicist addressed radio listeners and gave them the address and the number of a contact telephone urging them to send him all appropriate information on the issue."

The Russian Ministry of Security considered these and similar actions to be "illegitimate actions which can impair the national security interests."

BELORETSK FACILITY SAID TO BE BUNKER FOR "LEADERSHIP"

Almost every region in our militarized and secrecy-obsessed country has its own little secret.

Take, for example, the settlement of Tatly and the facility marked on the map as the "Beloretsk-15" nature reserve and, a little further on, the City of Solnechniy and "Beloretsk-16." Very few people in the republic know that major changes in the very geography of Bashkortostan are connected with the appearance of these facilities: The construction of the Beloretsk-Karlaman Railroad (204 KM), the Beloretsk-UFA Highway (224 KM), and the small towns of Tatly and Solnechniy with 30,000 residents each.

We are well into 1992. The whole world already knows that "Chelyabinsk-65" stands for the "Mayak" combine designed to produce nuclear weapons. To this very day, however, nobody knows exactly what "Beloretsk-15" and "Beloretsk-16" are.

At last, the facility's leader himself—General L. Tsirkunov—decided to brief the "over-curious". Leonid Akimovich is a military construction worker. What does this mean? It means that when he is working he is a construction worker, and when he is acting as spokesman he is a general. Which means that he has a greater commitment to secrecy than to accuracy of information; "If anybody thinks it possible that uranium could be buried here in our region, then as a specialist I declare that this cannot be." A strong argument!

Fine, maybe not uranium. But what? M. Shakirov, former First Secretary of the Bashkir CPSU Oblast Party committee, answered this question in December last year: The construction of an underground shelter for the USSR leadership in case of war began over 15 years ago beneath Beloretsk.

It is clear that several billion rubles have been pumped over the last few years into constructing an underground facility and corresponding infrastructure in the South Ural Mountains, and that a collective of skilled workers and engineering and technical staff was hauled in to do this. The amazing thing is that the work began under Brezhnev, gained momentum under Gorbachev, and is continuing under Yeltsin as if nothing has happened.

Mr. WARNER. Because of these problems and continuing uncertainty about the future of these strategic programs, I believe that conditions similar to those in the Nunn-Lugar legislation relating to defense production by these new states must be attached to the President's new initiatives. I have heard it suggested that many of these strategic nuclear programs should not be a cause for alarm, because they are permitted under the existing START Treaty and therefore qualify as "legitimate defense requirements."

Mr. President, I reject that analysis. President Bush announced on September 27, 1991, and January 28, 1992, the cancellation of numerous strategic modernization programs, such as the B-2 and certain air launched cruise missiles, MX production, Small ICBM development, and further production of the D-5 SLBM warhead. These and many other programs, while allowed for under START, are being canceled. Similarly, Russia should also cancel their existing and follow-on programs,

particularly given the state of their economy.

Mr. President, I would urge President Bush, in his continuing dialogue with President Yeltsin and the leaders of Ukraine, Kazakhstan, Belarus, and the other new states to ask, "What do you perceive as the threats to your own security?" Clearly, the United States and the other nations of the West are not a threat to these new nations. It is inconsistent to accept our aid, while at the same time continuing to treat us as a threat to their security. The President should ask, in this connection, why the strategic modernization program of the former Soviet Union is continuing in many important areas.

Mr. President, the United States should also seek an affirmative statement by the leaders of these new states with respect to the planned size and structure of their future military and security forces to deal with the threats they perceive to their security, leaving out the West. In short, in my opinion, the giving of aid by the West should greatly lower the degree of threat perceived by these new states. This then justifiably argues for a curtailment of their nuclear programs to a level necessary to deter threats from sources other than the West.

Finally, I would like to make one observation. While the President indicated that his aid package would be used to also support Ukraine and the other independent states of the former Soviet Union, I believe that this support to the other nations must be given a greater degree of emphasis. Specifically, this aid package should be more directly focused on these new independent states in some way, given the fact that currently the bulk of it must be directed towards Russia. Showing such direct support will serve two purposes.

First, it will provide confidence to new states by recognizing their independent national status, and by demonstrating that the United States believes that their success is also critical for establishing stability in that region of the world. In this regard, such support may alleviate the concerns of the remaining former Soviet Republics that still possess nuclear weapons. These concerns were highlighted to me by numerous Ukrainian officials during my recent trip. Specifically, they expressed deep concerns that once these weapons are removed from their territory, the United States and other Western nations would lose interest in ensuring their future success at establishing democracy for their people.

Second, in providing a substantial amount of the proposed aid to all these new states in the area of defense conversion, for example, it will directly work to curtail Russian defense production. Significant portions of the Russian defense production capability—component parts and final assembly—are located on the territories of the new states. In other words, we must ensure that some of this aid is used to help these new states to convert their defense infrastructure to more peaceful uses, such as needed civilian goods—thereby reducing the threat to the United States and our friends and allies.

Mr. President, President Bush has asked Congress to act on this historic proposal as quickly as possible. I will work aggressively for its passage. But I will also seek to ensure, by amendment if necessary, that the appropriate linkages relating to these U.S. national security considerations are included in this legislation. Thank you, Mr. President.

OSHA DELAY IN ISSUING THE CADMIUM STANDARD

Mr. KENNEDY. Mr. President, during the last 2 months the Senate Labor and Human Resources Committee has been forced to focus a great deal of attention on the various roadblocks imposed by the administration on OSHA, in a seemingly endless effort to prevent OSHA from adequately protecting workers' health and safety.

In January, President Bush ordered all administrative agencies—including OSHA—to conduct a top-to-bottom review of existing regulations. OSHA was told to devote its resources to the review, even if doing so would slow down its efforts to finalize much-needed and long-awaited health and safety protections. OSHA was also told to look for regulations to be watered down, but not for regulations to be strengthened.

In addition, OSHA was told to subject all regulations to a strict cost-benefit test, even though the Supreme Court has clearly stated that OSHA may not rely on cost-benefit analysis in setting worker protections from health hazards, such as asbestos, lead, or cadmium.

In March, the Office of Management and Budget ordered OSHA to delay an important and relatively noncontroversial health regulation that would protect more than 6 million workers in the agriculture, maritime, and construction industries, in order to analyze whether protecting these workers from exposure to toxic chemicals might somehow endanger their health by reducing their potential pay. OSHA doesn't need to spend its time studying whether 50 cents more a week will make workers healthier than protecting them from exposure to dangerous chemicals in the first place. OMB's attempt to force OSHA to conduct this study was a transparent effort to bog OSHA down in a needless risk analysis, in order to delay clear protections for workers.

Now, concern over OSHA's unconscionable delays has spread to the judiciary. Last week, the U.S. Court of Appeals for the District of Columbia Circuit issued an unusually strong opinion condemning OSHA's delays and ordering it to issue a standard addressing the significant health problems caused by cadmium exposure.

Approximately a quarter of a million workers are exposed to high levels of cadmium in the workplace, and hundreds of thousands more are exposed to somewhat lower levels. Workers in the battery industry, those who do electroplating, welding, or smelting, or who work with a variety of pigments are all at risk for cadmium exposure. Exposure to cadmium, even at levels well below OSHA's existing standard, can cause kidney failure and lung and prostate cancer. OSHA itself has stated that "[t]here is an abundance of data for [cadmium's] severe adverse health effects, clearly indicating that exposure to cadmium in the industrial environment can cause serious toxic effects in human beings."

OSHA was first asked by the International Chemical Workers Union and Public Citizen Litigation Group to issue a revised cadmium standard 6 years ago. For 5 years, OSHA has been promising to issue the standard by a series of specific dates, and has been urging the Federal court not to impose a judicial deadline. Over and over, the D.C. Circuit has deferred to OSHA and refused to impose a deadline. Year after year, OSHA failed to meet its self-imposed deadlines, and the patience of the Court of Appeals finally ran out.

At stake is much more than an abstract legal question. The question is whether this administration has any real intention of meeting its statutory and moral responsibility to protect workers. Using the administration's own figures, 84 people have unnecessarily died and 600 more have unnecessary become ill during the 6 years the cadmium standard has been buried at OSHA.

Last week, the D.C. Circuit finally said "enough is enough." As the judges told OSHA:

> There is a point when the court must "let the agency know, in no uncertain terms, that enough is enough," and we believe that point has been reached.
>
> We are not unmindful of OSHA's need to "juggle competing rulemaking demands on its limited scientific and legal staff," but we think the delay in promulgating a final rule that OSHA believes is necessary to workers' well-being has been too lengthy for us to temporize any longer.
>
> We accept OSHA's estimate of the additional time it needs to complete the final stages of the rulemaking, but we insist that there be no postponement beyond the August 31, 1992 target date. Any additional delay would violate this court's order.

I commend the D.C. Circuit for its opinion, and I ask that the full text of the opinion be placed in the RECORD at the conclusion of my remarks.

I hope that the combined efforts of the judiciary and Congress will finally force OSHA to start meaningfully pro-

tecting workers' health and safety. No employees anywhere in this country should be asked to sacrifice their lives or their health in order to make a living.

U.S. Court of Appeals for the District of Columbia Circuit

Issued March 20, 1992

No. 89-1357

IN RE INTERNATIONAL CHEMICAL WORKERS UNION, ET AL.

On Petitioner's Motion to Impose a Deadline for Completion of the Cadmium Rulemaking.

Petition for Writ of Mandamus Argued October 13, 1989.

Before: WALD, RUTH B. GINSBURG, and SILBERMAN, *Circuit Judges*.

Opinion for the Court filed *Per Curiam*.

Per Curiam:

I.

Six years ago, petitioners International Chemical Workers Union and Public Citizen Litigation Group filed rule-making petition with OSHA requesting it to issue immediately an Emergency Temporary Standard ("ETS") under section 6(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §655(c) (1988), for occupational exposure to cadmium. *See* Petition (dated June 18, 1986). Petitioners asserted that

"[i]n light of the new human evidence on lung cancer, it is clear that the present OSHA standard is grossly inadequate, and there is absolutely no justification for further regulatory delay. Since no exposure to a carcinogen is considered to be safe, OSHA must regulate cadmium as a carcinogen and set as low a standard as possible." *Id.* at 3.[1]

In October 1986 and again in February 1987, petitioners inquired of OSHA about the status of their petition. After a full year had passed, petitioners filed in June 1987 for a writ of mandamus in this court to compel OSHA to take emergency action to protect workers from exposure to cadmium. One week later, on July 1, 1987, OSHA finally responded to petitioners' request. *See* Letter from OSHA to Petitioners (dated July 1, 1987) ("OSHA's July 1987 Response"). Although OSHA agreed that "there is clear evidence that exposure to cadmium can result in irreversible damage to the kidneys," the agency nonetheless refused to issue an ETS:

"[B]ased on our analysis of your petition and the underlying data, OSHA finds that the currently available data are not sufficiently definitive in certain critical areas to support the need for an ETS, particularly in light of the extremely stringent statutory criteria for issuing and sustaining such an action." *Id.* at 2. Even though it denied petitioners' request to proceed under section 6(c), OSHA admitted that "there is a need to embark promptly on further rulemaking" under the traditional section 6(b) procedures. *Id.* at 5.

In light of OSHA's announcement of its intention promptly to initiate rulemaking, this court treated the mandamus petition as one for review of OSHA's denial of an ETS, *In re International Chemical Workers Union*, 830 F.2d——, 370 (D.C. Cir. 1987)(per curiam). It denied the petition, concluding that OSHA is entitled to "great deference" in its assessment of scientifically complex facts and in its "balancing of the competing policies that underlie the decision whether to issue an ETS." *Id.* at 371.

OSHA stated at the time that "[w]e anticipate that a Notice of Proposed Rulemaking will be published in the *Federal Register* in December 1987. We anticipate the publication of a final standard 18 months after publication of the proposal," *i.e.*, in June 1989. OSHA's July 1987 Response at 2. After OSHA had missed its December 1987 timetable for proposing a rule, petitioners warned that

"[i]n light of the magnitude of this risk, we cannot stand by while OSHA persists in foot-dragging. Unless we are promptly assured that OSHA intends to expedite the cadmium rulemaking, and are provided realistic milestones with which we can chart the agency's progress, we will be compelled to once again take legal action to force the agency to move expeditiously in this rulemaking."

Letter from Petitioners to OSHA (dated June 29, 1988) at 2. OSHA responded that "[i]t is the Agency's intention to move as quickly as possible to establish a standard for cadmium" and that the proposed rule would be published "in late summer or early fall" of 1988. *See* Letter from OSHA to Petitioners (dated Aug. 10, 1988). At this point, OSHA was lagging almost a year behind its original rulemaking schedule.

In September 1988, OSHA issued guidelines to employers who produce or use cadmium to alert them to the inadequacy of OSHA's current exposure standards. *See* OSHA, U.S. Dep't of Labor, *Protective Measures for Controlling Exposure to Cadmium* (1988). These guidelines, however, were unenforceable and were intended to serve only as an interim measure, pending the adoption of a final rule. Two months later, in November 1988, OSHA informally circulated a draft proposed standard to members of the Construction Advisory Committee and held a public meeting. However, OSHA never published the proposed rule in 1988 as its altered schedule had promised.

Seven months more went by without a proposed rule, and petitioners once again wrote to respondents, expressing their "deep and long-standing concern that [OSHA] has unreasonably delayed adoption of a new standard to protect workers from the devastating health effects" attributable to cadmium exposure. Letter from Petitioners to Secretary of Labor (dated Mar. 21, 1989) at 1. In its reply, OSHA proposed still another postponement:

"It is anticipated that the earliest a proposed standard could be published would be in the fall of this year [1989]. If the rulemaking then proceeds routinely, it is likely to take until June 1991 to complete the Final standard. While OSHA has not met the schedule previously proposed, OSHA staff has worked diligently to expedite the development of this standard, which involved complex issues."

Letter from OSHA to Petitioners (dated Apr. 18, 1989) at 1. This revised schedule was now two years behind that which OSHA originally proposed to the court at the time of petitioners' request for an ETS.

In June 1989, petitioners petitioned this court for a writ of mandamus to compel OSHA to issue a proposed cadmium standard within one month and a final rule within one year. OSHA opposed any imposition of deadlines, representing to the court that it intended to produce a final cadmium standard within 18 months of publication of the proposal. On October 6, 1989, OSHA informed this court that after submitting a Notice of Proposed Rulemaking to the Office of Management and Budget ("OMB"), discussions between the Department of Labor and OMB were proceeding on an expedited basis. After oral argument, this court issued an order concluding that it is "reasonable to estimate that OMB should be able to complete its review of the proposed cadmium rule within three months of the date of this order" and that, by the end of the three-month period, OSHA should "file a report with the court indicating the status of the proposed rule and the date by which the agency expects to issue a final cadmium rule." Order (filed Oct. 20, 1989).

On January 22, 1990, respondents filed the required status report. They stated that OMB had completed its review of the proposed rule on January 19 and that OSHA would deliver it to the *Federal Register* on January 25. OSHA also argued that "[i]f this Court does set a date for issuance of a final rule, OSHA suggests, the agency be allowed 18 *to 24* months from publication of the proposed rule." Secretary of Labor's Status Report (filed Jan. 22, 1990) at 2 (emphasis added). Petitioners objected that OSHA was now stating for the first time that it would require 24 months, not 18 from notice of the proposed rule to the completion of the rulemaking. Under OSHA's new timetable, the issuance date was pushed forward to 1992.

The proposed rule was published in the *Federal Register* on February 6, 1990. *See* 55 Fed. Reg. 4052 (1990) (to be codified at 29 C.R.R. pt. 1910). In a subsequent order, we stated that "[w]e are satisfied with OSHA's compliance to this point, but note that OSHA's current projection of a 24-month period from the date of publication of the proposed rule to the publication of a final rule exceeds by six months the 18-month period it projected in its brief, which was filed several months ago." Order (filed Feb. 12, 1990) at 1-2. The court continued to retain jurisdiction over the case and ordered OSHA to submit a status report every six months until a final rule was published.

Over the next two years, respondents filed three status reports: On August 13, 1990 (reporting that public hearings were held in June and July, 1990); February 12, 1991 (reporting that the comment period had closed on October 18, 1990 and that the OSHA staff is "well underway in the process of reviewing and analyzing the record" of hearings and submissions); and on August 12, 1991 (reporting that "preliminary drafts of significant portions of the text of the standard and of the accompanying preamble" have been completed and that OSHA anticipated reopening the record for the limited purpose of soliciting comments on new information concerning carcinogenicity of certain cadmium compounds).

[1] Cadmium is a soft, blue-white metal or gray powder that is obtained as a by-product from the refinement of zinc and other metals. It has many industrial uses, ranging from rust protection to pigmentation. Workers in lead and zinc smelters, as well as those in electroplating and welding, all face potentially high exposures to cadmium.

It is undisputed in this record that cadmium is extremely dangerous. OSHA's 1971 permissible exposure limit of 100 micrograms per cubic meter of air ($\mu g/m^3$) was set as an interim level reflecting minimum health and safety standards at the time. This level is still the standard, despite numerous epidemiological studies that have demonstrated that exposure to levels well below 100 $\mu g/m^3$ causes kidney failure as well as lung and prostrate cancer. Although the parties disagree about the precise risk estimates associated with cadmium exposure at different levels, "[t]here is an abundance of data for several adverse health effects, clearly indicating that exposures to cadmium in the industrial environment can cause serious toxic effects in human beings." 55 Fed. Reg. 4052, 4065 (1990). OSHA's proposal would ensure that no worker is exposed to an airborne concentration in excess of 5 $\mu g/m^3$, calculated as an eight-hour time weighted average exposure.

Respondent's latest status report was filed on February 12, 1992 and reported, disappointingly, that "despite the progress to date, OSHA was unable to promulgate the final standard within 24 months of the proposal as projected." Secretary of Labor's Status Report (filed Feb. 11, 1992) ("1992 Status Report") at 2. Respondents predicted that the final rule would not be published until August 31, 1992. *Id.*

Respondents gave three reasons for this latest delay in the issuance of the final rule beyond the original 24 month period. First, the OSHA staff member responsible for producing the final risk assessment resigned unexpectedly in the fall of 1991 before completing it. "[A] significant amount of time was required to familiarize the contractor with the complex issues and data base involved and to discuss and evaluate appropriate risk methodologies." *Id.*

Second, the "development of the standard's medical surveillance requirements has proven more time consuming than anticipated." *Id.* Specifically, respondents represent that they have nearly completed only the "first draft" of the guidelines for protocols measuring Beta 2 microglobulin and cadmium levels in the blood. "To assess the feasibility of the biological monitoring requirements and assure the accuracy and reliability of laboratory analysis of monitoring results, OSHA had to contract out and oversee the development of appropriate guidelines." *Id.* at 3.

Third, as reported in the August 1991 status report, OSHA did briefly reopen the rulemaking record to receive the final reports of two recent studies on cadmium sulfide, as well as updated assessments by outside experts on these reports and public comments concerning cadmium sulfide generally and late-filed evidence submitted on certain other issues. *See* 56 Fed. Reg. 47,348–49 (1991). OSHA says it received more substantive comments on these other issues than it had anticipated and that "[s]ubstantial additional staff time is required to analyze and respond to the issues raised, delaying the drafting of portions of the final rule relating to the health effects of exposure to cadmium, including cadmium sulfide." 1992 Status Report at 4.

Finally, respondents predict that the August 31, 1992 data will provide time that is "absolutely necessary for completion of its statutorily mandated findings and conclusions concerning risk, benefit and feasibility in light of developments wholly beyond OSHA's control." *Id.* They acknowledge "the need to complete this rulemaking expeditiously and the current timetable reflects no lowering of the priority assigned to this project." *Id.*

II.

In light of this chronology, petitioners have renewed their motion to us to improve a definitive deadline for completion of the cadmium rulemaking. Petitioners do not oppose the seven month "extension of time"—from Februry 6, 1992 to August 31, 1992—that OSHA gives as its best estimate for completion of the rulemaking, but they "are adamant about the need for a court ordered deadline." *Id.* at 9. They insist that respondents' track record in meeting scheduling deadlines in the absence of a court order has been "dismal," *id.*; that the protracted delays exact too high a toll on exposed workers' health given the undisputed health risks of cadmium, *id*, at 10; and that the cumulative delay—extending over six years, from the time they requested an ETS—is so egregious as to demand the court's intervention to enforce as a deadline a termination date that the agency now agrees is reasonable and feasible, *id*, at 11 *see Public Citizen Health Research Group v. Brock*, 823 F.2d 626 (D.C. 1987) (per curiam) (ordering OSHA, after delay of six years, to adhere to schedule and warning that failure to comply with timetable may expose OSHA to contempt); *Public Citizen Health Research Group v. Auchter*, 702 F.2d 1150, 1157 (D.C. Cir. 1983) (per curiam) (ordering OSHA to issue a notice of proposed rulemaking within 30 days after a delay of only *three* years).

OSHA, however, opposes petitioners' motion, stressing that the additional seven-month period is necessary because "[t]he events in the late stages of this rulemaking, outlined in the February status report, could not have been anticipated or accounted for in OSHA's 1989 planning," Secretary's Response (filed Feb. 27, 1992) at 3 n.1, and "[t]hough some slippage in the previous schedule has occurred, that does not demonstrate the need for judicial intervention," *id*, at 5. Respondents insist that "[t]o issue a writ of mandamus on such a record . . . is to lower the threshold for mandamus to the point where the writ loses meaning and OSHA loses necessary freedom of judgment," *Id.* at 7.

III.

OSHA's rulemaking determinations are "essentially legislative and rooted in inferences from complex scientific and factual data," *United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1206 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981), and, accordingly, they are entitled to great deference, *see Auchter*, 702 F.2d at 1156; *see also In re Barr Labs.*, 930 F.2d 72, 74 (D.C. Cir.) ("respect for the autonomy and comparative institutional advantage of the executive branch has traditionally made courts slow to assume command over an agency's choice of priorities"), *cert. denied*, 112 S. Ct. 297 (1991). This court rarely reviews nonfinal agency action, preferring instead to review a factual record developed by the agency through the application of its expertise. *See Telecommunications Research & Action Ctr. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) (*"TRAC"*).

Nevertheless, in extraordinary circumstances, this court will review claims of unreasonable agency delay, for "[i]t is obvious that the benefits of agency expertise and creation of a record will not be realized if the agency never takes action." *Id.* Furthermore, the Administrative Procedure Act requires that an agency "proceed to conclude a matter presented to it" and that it do so "within a reasonable time." 5 U.S.C. §555(b) (1988). A reviewing court "shall compel agency action unlawfully withheld or unreasonably delayed." *Id.* §706(1); *see also TRAC*, 750 F.2d at 77 ("section 706(a) coupled with section 555(b) does indicate a congressional view that agencies should act within reasonable time frames and that court's [sic] designated by statute to review agency actions may play an important role in compelling agency action that has been improperly withheld or unreasonably delayed").

According to the law of the Circuit, a court must assess several factors in order to determine whether an agency's delay is "unreasonable." First, "the court should ascertain the length of time that has elapsed since the agency came under a duty to act," *Cutler v. Hayes*, 818 F.2d 879, 897 (D.C. Cir. 1987). Although there is no *per se* rule as how long is too long, "inordinate agency delay would frustrate congressional intent by forcing a breakdown of regulatory processes." *Id.* at 897 n.156. Second, "the reasonableness of the delay must be judged 'in the context of the statute' which authorizes the agency's action" *Auchter*, 702 F.2d at 1158 n.30 (quoting *National Congress of Hispanic Am. Citizens v. Marshall*, 626 F.2d 882, 888 (D.C. Cir. 1979)). Congress has declared that the purpose and policy of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§651-678 (1988), is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." *Id.* §651(b).

Third, the court must examine the consequences of the agency's delay. *Cutler*, 818 F.2d at 898. "Delays that might be altogether reasonable in the sphere of economic regulation are less tolerable when human lives are at stake." *Auchter*, 702 F.2d at 1157.

Finally, the court should give due consideration in the balance to "any plea of administrative error, administrative convenience, practical difficulty in carrying out a legislative mandate, or need to prioritize in the face of limited resources." *Cutler*, 818 F.2d at 898; *see also In re Barr Labs.*, 930 F.2d at 75; *TRAC*, 750 F.2d at 80 ("the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority"). In this case, OSHA has cited to the resignation of a key staff member, the unanticipated delay in developing medical surveillance guidelines, and the need to respond to additional comments as contributing to the latest seven-month postponement. Furthermore, OSHA has argued that it "did not have unlimited resources with which to address these problems" because of deadlines imposed by Congress with respect to other rulemaking proceedings. *See* 1992 Status Report at 4 n.2.

It is OSHA itself, however, which has suggested August 31, 1992 as the date on which it can complete the rulemaking. "Although we are disappointed with this target date," *Brock*, 823 F.2d at 629, we accede on balance to OSHA's plea for additional time. But even if finally completed by August 31, 1992, the cadmium rulemaking will have taken over six years. This is an extraordinarily long time, in light of the admittedly serious health risks associated with the current permissible levels of cadmium exposure under the twenty-year-old standards still in place. Whether the delays at every stage are the result of the agency's "persistent excess of optimism," *Brock*, 823 F.2d at 629, or attributable to bureaucratic inefficiencies, *id.* at 628, there must be an end to the process sometime soon. Under the circumstances, we do not see how any further delay beyond August 31, 1992—resulting in continued exposure of workers to dangerous levels of cadmium—could be excusable. *See* 55 Fed. Reg. 4052, 4084–85 (1990) (cadmium exposure even at levels below the 100 $\mu g/m^3$ current standard may lead to kidney dysfunction, reduced pulmonary function, chronic lung disease, and cancer).

The agency is now in the concluding phase of the rulemaking; it predicts final issuance of a rule in five months from now. It is hard to conceive of why that date cannot be met. Yet for three years, OSHA has not met any timetable proposed to the court, and we have grave cause for concern that if we do not insist on a deadline now, some new impediment will be pleaded five months hence. OSHA's asserted justifications for the delay become less persuasive the longer the delay continues.

There is a point when the court must "let the agency know, in no uncertain terms, that enough is enough," *Brock*, 823 F.2d at 627, and we believe that point has been reached. We are not unmindful of OSHA's

need to "juggle competing rulemaking demands on its limited scientific and legal staff," *id.* at 623, but we think the delay in promulgating a final rule that OSHA believes is necessary to workers' well-being has been too lengthy for us to temporize any longer. We accept OSHA's estimate of the additional time it needs to complete the final stages of the rulemaking, but we insist that there be no postponement beyond the August 31, 1992 target date. Any additional delay would violate this court's order.

IV.

Petitioners' Motion to Impose a Deadline for Completion of the Cadmium Rulemaking is granted, and respondents are ordered to issue a final rule by August 31, 1992.

It is so ordered.

U.S. SENATE,
Washington, DC, April 2, 1992.

MR. PRESIDENT: As you well know, even as the peoples of the former Soviet Union take their first breaths of free air, minorities throughout the newly created republics live in constant fear of oppressive majority elements. For the past several weeks, I have highlighted the reemergence of anti-Semitism in Russia and Ukraine, and today I turn to the situation confronting Jewish citizens in the Republic of Moldova.

The ethnic and political scenario for Jews in Moldova is much more complex than in many of the other nations of the Commonwealth of Independent States. Moldova, considered in conjunction with neighboring Romania with whom ties were extremely strong prior to the 1940's, has a historically significant level of anti-Semitism. Also, the economic situation in Moldova is by far one of the worst in the states of the former Soviet Union, and the chaos of recent economic events have renewed fears of violence against minority groups, who are scapegoated for the financial problems.

What is more, Moldova has been at the forefront of the nationalistic movements among the newly independent states, and their nationalism has increasingly become a movement of exclusion, rather than inclusion, for many minority groups, among them Russians, Gagauzis and Jews. Finally, there appears to be evidence of governmental anti-Jewish sentiment confronting Jews attempting to emigrate to both Israel and the United States. There are numerous cases exemplifying the government's refusal to permit emigration on the basis of arbitrary reasons that can only be understood as anti-Jewish policy.

However, anti-Semitism in Moldova over the past few years has not been as evident as the outbreaks of violence, graffiti and desecration so readily apparent in other regions. Rather, in this region, anti-Semitism is akin to a slumbering giant; it casts a lingering shadow over the hopes and aspirations of the remaining Jews, yet it does not appear as an immediate problem.

A brief overview of the history of Jews in Moldova will paint an interesting picture. By the close of the 19th century, the number of Jews in Kishinev, the capital of Moldova, numbered 50,237, 46 percent of the city's entire population. Two large pogroms in the first five years of the 20th century, however, drastically affected the Jewish population both in Kishinev and in Moldova at large. During Easter of 1903, agents of the Ministry of the Interior and the Bessarabian administration in charge of the region initiated a riot and 49 Jews were killed and 500 others were injured. Just two years later, mob action against Jewish citizens broke out once again. On October 19-20, 1905, "patriots" attacked the Jewish quarter of Kishinev, killing 19, injuring 56 and looting large numbers of Jewish shops and homes. In 1941, Kishinev was occupied by German and Romanian forces, who immediately initiated the massacre of the city's Jews, taking the lives of more than 10,000 Jewish citizens. These atrocities are well recorded in the history books.

Just as important though are recent events in Moldova, as they will inevitably affect that country's Jews. Moldova's declaration of independence of August 27, 1991, was immediately followed by secession proclamations by Moldova's Gagauz and Dnestr Valley Russian minorities. The relevance of these movements to the Jewish population is that they highlight a fear among many minorities of the possible reunification of Moldova and Romania, which have been linked as a region known as Bessarabia in the past.

Jews, through their experience of the heinous acts that Romanians have perpetrated against them in the past, give rise to fears of this reunification, which Romanian President Ion Iliescu has stated is "inevitable." And though the Moldovan government's official stance has backed away from its highly emotional sympathy for reunification, there are strong elements urging the reunion. What all of this means for minorities at present is not certain, but this tenuous situation has given rise to fears among minorities that have carried the country to the brink of war, threatening to divide Moldova along ethic lines. If that is the case, Jews, who compromise only about 1-2% of the Moldovan population could be caught in the middle.

Aside from these fears of the possible reunification of Moldova and Romania and the anti-Semitic violence that may be born from it, there are very real instances of anti-Jewish sentiment at present. I have received letters from Moldovan Jews pleading to be saved from the anti-Semitic violence that threatens their very lives. Perhaps most poignant is a letter from Torbina Michaylovna, whose family is the last remaining Jewish family in their village. She wrote:

"On the evening of October 7, 1989, (at) about 11:30 p.m. two (people) in black masks rushed into our house . . . It is difficult for me to write, the tears fill my eyes. They killed my mother, but she saved all of us. They tried to kill my (one-year old) baby, but I covered him with my body and they hit me on the head believing that they had killed me . . . We continue to live in constant fear for our lives and those close to us . . . nobody cares about us . . ."

And this is not an isolated incident. In a poll of 500 Jewish leaders in December of 1989, 93% of those who responded had personally experienced some manifestations/displays of anti-Semitism in the past six months in Moldova. In addition, over half of those polled expressed their feeling that there is a possibility in the near future of a flare of anti-Semitism with accompanying acts of brutality. As one Soviet Jew wrote in his letter to a staff member at the Center for Human Rights Advocacy, "And now we feel as if we lived on a volcano expecting a new break of violence any moment. And Jews, as you know, are to blame for everything."

Most importantly, though, there are a number of Moldovan Jews who have been experiencing great difficulties in their attempts to emigrate. Several of these Jewish citizens, such as Gagarina Bystrik, Karmanova Finkel and Sovetyskoy Gospas have been trying to secure permission to emigrate for over ten years, but have been refused on completely arbitrary grounds. In other cases, such as that of Gennady Blumin, Jewish citizens have been subject to extralegal prosecution, merely for their desire to emigrate. Mr. Blumin, who has been held in jail for over a decade for the offense of using government supplies to make beach bags for private sale, was never questioned during the investigation, was denied the right to be present at his trial and was given a 12 year sentence for what is normally a four-five year crime. All of this has led many to the conclusion that Mr. Blumin's expressed interest to emigrate has brought the wrath of anti-Jewish sentiment to bear down upon him.

There are growing accounts of the Moldovan government's willingness to support the remaining Jewish population. According to Aleksandr Brodsky, the editor of the newspaper Nash Golos, a home for elderly Jews will be founded, there will be a department of Judaica at the university, former prisoners of ghettos and concentration camps will be given the status of disabled veterans and food aid for poor Jews will be given during the winters. And, recently, Moldovan President Mircha Snegar issued a statement pledging his support for these and other Jewish cultural projects.

Nevertheless, as Moldova stands on the brink of civil war between several ethnic interests, many view President Snegar's declaration as a symbolic political move indicative not of Moldova's concern for the Jews, but rather for international opinion about the treatment of minorities.

So, despite these latest attempts by the Moldovan government, the specter of anti-Semitism stands as clearly today as ever. We cannot stand idly by; now is the time for action to help not only the Moldovan Jews, but also Jews throughout the former Soviet Union as they struggle to escape the grasp of anti-Semitism that has so long held them in its grip.

SENATOR CONRAD NOT TO RUN

Mr. BURDICK. Mr. President, my distinguished colleague from North Dakota has made a very difficult decision not to run for reelection. Senator CONRAD is an aggressive, articulate fighter for North Dakota, and he will be greatly missed in the Senate.

From day one, KENT has fought for North Dakota farmers. He deserves special credit for his work on the Food, Agriculture, Conservation and Trade Act of 1990 and legislation to help drought-stricken farmers. He earned respect from his colleagues on the Agriculture Committee and played a key role in drafting the farm bill, particularly provisions dealing with farm credit, research, and rural development.

KENT CONRAD has been a strong advocate for economic development. Largely through his efforts, several new businesses have been attracted to North Dakota in recent years. I also commend him for his work to increase exports and eliminate unfair trade practices that hurt American agriculture.

In his successful race against Mark Andrews in 1986, KENT CONRAD pledged to reduce the Federal deficit. As a U.S. Senator and a member of the Senate Budget Committee, he hasn't been afraid to speak up against waste in the budget and in individual spending bills.

Senator CONRAD's work on the Energy and Natural Resources Committee has greatly benefited North Dakota. He has promoted careful development of our natural resources and done a great deal to address North Dakota's specific energy concerns.

KENT and I have worked together closely on the Garrison diversion project and other public works priorities in our State. We are jointly sponsoring legislation pending in this body to provide additional compensation to two North Dakota tribes for losses associated with construction of the Garrison Dam.

I especially enjoy working with KENT on the Select Committee on Indian Affairs, where this former North Dakota Tax Commissioner showed his compassion and concern for the problems facing native Americans. He also works with me on the Senate rural health caucus to address the health care needs of rural Americans, particularly senior citizens.

For many reasons, Senator CONRAD has chosen not to run for a second term in the Senate, although I firmly believe he would have won reelection. On behalf of everyone in North Dakota, I would like to thank him for the 6 years he has devoted to serving North Dakota in this body and wish him the best in his future endeavors.

EXECUTIVE SESSION

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar 17, the International Covenant on Civil and Political Rights.

I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification; that the recommended reservations, understandings, declaration and a proviso to Executive Calendar 17 be considered as having been proposed and agreed to and that no other amendments, reservations, understandings, declarations or provisos be in order; that any statements be inserted in the CONGRESSIONAL RECORD as if read; that the motion to reconsider be laid upon the table; that the President be notified of the Senate's action and that following disposition of the treaty.

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

Mr. PELL. Mr. President, the International Covenant on Civil and Political Rights, which we are now considering, is part of the international community's early efforts to give the full force of international law to the principles of human rights embodied in the Universal Declaration of Human Rights and the U.N. Charter. The covenant is rooted in Western democratic traditions and values. It guarantees basic rights and freedoms consistent with our own Constitution and Bill of Rights.

The covenant was unanimously adopted by the U.N. General Assembly on December 16, 1966, and entered into force on March 23, 1976. To date, 103 States have become party to the covenant and another 5, including the United States, have signed.

The Carter administration submitted the covenant along with three other human rights treaties to the Senate in 1979. I believe that there was significant support for ratification at that time. However, domestic and international events at the end of 1979 prevented the Foreign Relations Committee from moving to a vote on the covenant after hearings were completed. The Reagan administration, regrettably, had no interest in ratifying this treaty. I am pleased that the present administration finally decided to support it last August. In my view, ratification is long overdue, but better late than never.

The Foreign Relations Committee held a hearing on the Covenant on November 21, 1991. At that time, the administration submitted a package of reservations, understandings and declarations for the committee's consideration. In many respects this package is similar to the one proposed by the Carter administration in 1979.

On March 4 the committee voted 19 to 0 to report favorably the covenant with a resolution of ratification containing the reservations, understandings, and declarations proposed by the Bush administration and a proviso offered by Senator Helms. This proviso is similar to language adopted by the Senate in October 1990 as part of the resolution of ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It clarifies the relationship between the covenant and the U.S. Constitution. Since this relationship is a matter of U.S. domestic law, the proviso will not be included in the instrument of ratification to be deposited by the President.

The United States plays a leading role in the international struggle to promote and protect human rights. However, failure to ratify the covenant has blemished our record and cast doubt, in some quarters, about the seriousness of our commitment to human rights. Ratification will reverse this situation. It will demonstrate that our commitment is serious and sincere and strengthen our voice as a champion of human rights. Ratification will enable the United States to participate in the work of the Human Rights Committee established by the covenant to monitor compliance. The rights guaranteed by the covenant are the cornerstones of a democratic society. By ratifying the covenant now, we have an opportunity to promote democratic rights and freedoms and the rule of law in the former Soviet Republics, Eastern Europe, and other areas where democracy is taking hold.

During the course of the committee's consideration of the covenant, concerns were expressed by some in the human rights and legal communities about particular conditions proposed by the administration for ratification. In some cases, U.S. law and practice were at issue. In others, it was a philosophical difference. However, in the final analysis, the vast majority of those expressing concern came down in favor of ratification with the administration's proposed package. It is clear that there is widespread support for U.S. ratification of this covenant now among those in the human rights field. Mr. President, I ask unanimous consent that the following letters of support be printed in the RECORD.

Mr. President, this is a worthy covenant and one that we can be proud of ratifying. I urge all my colleagues to support it.

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

AMNESTY INTERNATIONAL USA,
Washington, DC, March 27, 1992.

Hon. CLAIBORNE PELL,
Chairman, Senate Foreign Relations Committee, U.S. Senate, Washington, DC.

DEAR SENATOR PELL: As you know, Amnesty International supports ratification by the United States of the International Covenant on Civil and Political Rights (ICCPR). We regard ratification of this instrument as a major first step in the process of the United States entering more fully into an international human rights system, which is of the greatest importance for the promotion of human rights around the world. We also consider that ratification should proceed as expeditiously as possible. For too long the influence and moral authority of the United States in the international promotion and protection of human rights has been seriously undermined by its failure to ratify some of the fundamental human rights instruments including the two International Covenants. We have welcomed your leadership on the issue of ratification of the ICCPR and the efforts you have made to carry forward this process in the Senate.

As you also well know, however, Amnesty International has consistently maintained its position that it is of the utmost importance that the United States ratify such international human rights treaties without reservations, declarations or understandings that undermine the guarantees of the ICCPR. We are, therefore, most concerned about the limiting reservations, declarations and understandings put forward by the Administration which we consider reflect an

unwillingness by the United States to accept the full scope of the international standards set forth in the ICCPR.

In particular, Amnesty International has serious objections to the reservation proposed in respect to Article 6 of the ICCPR—a reservation that envisages the continued practice within the United States of the execution of juvenile offenders. Article 6 guarantees one of the most fundamental rights protected by the ICCPR—the right to life—and its provisions are among those which may never be derogated from in any circumstances, according to Article 4(2). Indeed, there is a serious question as to whether a reservation to a non-derogable right would be considered null and void. The international consensus against the execution of juvenile offenders, which is also reflected in a number of other important international human rights standards, is overwhelming. Only a very few governments continue to execute juvenile offenders—besides the United States these include Bangladesh, Iran, Iraq, Nigeria and Pakistan.

If this reservation is maintained, Amnesty International will continue to make every effort to draw attention to this grave limitation by the United States on the fundamental rights guaranteed by the ICCPR following ratification. We will actively seek through our membership in this country and internationally, to bring the United States fully into conformity with all the standards in the ICCPR. This would include approaches by our organization to urge other states parties to the ICCPR as well as its monitoring body, the Human Rights Committee, to take up directly with the United States Government the issue of the execution of juvenile offenders and the validity of a reservation to a nonderogable right.

We hope you will be able to take these concerns into account and we look forward to continuing to work with you in ensuring full compliance by the United States with international human rights standards.

Sincerely yours,

CAROLE NAGENGAST,
Chair, Board of Directors.

UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA,
New York, NY, March 31, 1992.

Senator CLAIBORNE PELL,
Committee on Foreign Relations,
Washington, DC.

DEAR MR. CHAIRMAN: The United Nations Association of the United States welcomes the recent decision of the Foreign Relations Committee to support by unanimous vote a resolution of ratification for the International Covenant on Civil and Political Rights (ICCPR). We now urge you to join with your colleagues in seeking an expeditious vote on advice and consent to ratification of this important human rights document.

The Covenant, which obligates governments to protect civil and political freedoms contained in the Universal Declaration of Human Rights, is increasingly important to the process of democratization that is underway in so many areas of the world. Ratification of this treaty will strengthen the United States' credibility as a proponent of human rights while augmenting the ICCPR as the single standard for all nations in the field of civil and political rights. Our country's adherence to the Covenant will also enhance America's ability to influence the interpretation, application, and further development of international human rights law in a way that promotes universal respect for democratic principles and the rule of law.

The United States played an important role in drafting the Covenant, voted for its adoption in 1966, and President Carter signed it in 1977. Today, 102 states—including most of Western Europe—are parties to it. Like President Bush, we believe that US ratification of the Covenant will enhance our nation's efforts to improve respect for fundamental freedoms around the world. At its National Convention in 1990, UNA-USA adopted a resolution on ratification of international human rights treaties, noting, "in this new worldwide era of democracy, of international cooperation and of support for the United Nations, the promotion and protection of human rights deserve special priority on behalf of all nations." We urge you to support actively continuing US leadership in this field.

With best wishes,

Sincerely,

JOHN C. WHITEHEAD,
Chair of the Association.

MAX. M. KAMPELMAN,
Chair, Board of Governors.

YALE LAW SCHOOL,
New Haven, CT, March 20, 1992.

Senator CLAIBORNE PELL,
Chairman, Senate Foreign Relations Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR PELL: We write to urge the Senate to advise and consent to the International Covenant on Civil and Political Rights so that the United States may promptly ratify it.

We are disappointed on some of the reservations, declarations and understandings that are proposed.[1] We believe they are unnecessary to protect genuine national interests and unhelpful to achievement of the objectives of the Covenant. United States' ratification even on those terms, however, is preferable to no ratification. The national momentum for ratifying human rights instruments, arrested some forty years ago but now reestablished, should not be stopped. Ratification of this and other instruments will enhance the cause of human rights, an important part of our foreign policy, and enable our government and citizens to play a more direct and active role in their implementation. Failure to advise and consent and to ratify will limit our role. The message we seek to send to governments and peoples everywhere will be greatly confused.

World order has taken enormous strides in recognizing and demanding human rights. In commencing to ratify human rights treaties, we have resumed an important and indispensable role in international organizational implementation.

We hope you and your colleagues in the Senate will now advise and consent to the International Covenant on Civil and Political Rights.

Sincerely,

Ralph Brown, S.E. Baldwin Professor of Law, Emeritus; W. Michael Reisman, W.N. Hohfeld Professor of Jurisprudence; Harold H. Koh, Professor of Law; Ruth Wedgwood, Associate Professor of Law; Myres S. McDougal, Sterling Professor of Law, Emeritus.

[1] You may, of course, advise and consent while expressing your hesitations about all or some of the reservations, declarations and understandings. We would be prepared to offer you our own advice about what we think these failings are.

UNIVERSITY OF FLORIDA,
COLLEGE OF LAW,
Gainesville, FL, March 27, 1992.

Senator CLAIBORNE PELL,
Chairman, Senate Foreign Relations Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR PELL: Attached you will find the copy of a letter signed by members of the faculty of the University of Florida College of Law. In this letter we urge that you support bringing the international covenant on Civil and Political Rights to the floor of the Senate for an affirmative advice and consent vote as soon as possible.

Yours sincerely,

WINSTON P. NAGAN,
Professor of Law.

UNIVERSITY OF FLORIDA,
Gainesville, FL, March 26, 1992.

Senator CLAIBORNE PELL,
Chairman, Senate Foreign Relations Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR PELL: We write to commend your leadership and the Senate Foreign Relations Committee's good sense in voting out (by a vote of 19–0) the International Covenant on Civil and Political Rights. We now urge that you and your colleagues in the Senate act to promptly give the advice and consent of the Senate to the Covenant to ensure its prompt ratification by the United States.

As academic lawyers deeply concerned about the Rule of Law and the defense of democratic institutions, we are disappointed at some of the reservations, declarations and understanding [RUD's] that the Foreign Relations Committee has proposed. We do not believe that these qualifications on the Covenant are necessarily in the national interest, nor do we believe they will accelerate the achievement of the major purposes of the Convention. However, we strongly believe that it is in the national interest to secure ratification, even with the package of RUD's, rather than risk the prospect of no ratification.

The promise of the Rule of Law and a global initiative in favor of democracy was radically, and astigmatically limited forty years ago when the ratification log-jam started. The political will and the international climate now indicate a renewed commitment to the Covenants is warranted, and in the national interest. This process should not be arrested.

Ratification of the International Covenant on Civil and Political Rights will significantly enhance respect for human rights and fundamental freedoms around the world and is an important institutional support for the development of the civil society in vast corners of the globe where U.S. influence is paramount. The instrument when ratified will become an important part of our foreign policy calculus, and enable our government and citizens to play a direct and active role in the implementation of the prescriptions in the Covenant.

A failure to promptly give the Senate's advice and consent to ensure ratification will severely limit the efficacy of the U.S. role in world affairs and will send a confusing signal about the true genesis of American commitment to the Rule of Law and democratic values.

We strongly urge that you do all in your power to secure the ratification of the International Covenant of Civil and Political Rights.

Yours sincerely,

Winston P. Nagan, Professor of Law; Fletcher N. Baldwin, Jr., Professor of

Law; Kermit L. Hall, Professor of Law; Stuart R. Cohn, Professor of Law; George K. Yin, Professor of Law; E.L. Roy Hunt, Professor of Law; Ernest M. Jones, Professor of Law; Thomas R. Hurst, Professor of Law; Joseph W. Little, Professor of Law; Walter Probert, Professor of Law; Michael W. Gordon, Professor of Law; Christopher Slobogin, Professor of Law; Jeffrey Davis, Professor of Law; Jon Mills, Professor of Law.

Amy R. Mashburn, Assistant Professor of Law; Steven J. Willis, Professor of Law; Walter O. Weyrauch, Professor of Law; Alyson Flournoy, Professor of Law; Jeffrey L. Harrison, Professor of Law; Elizabeth T. Lear, Assistant Professor of Law; Michael L. Seigel, Assistant Professor of Law; Richard N. Pearson, Professor of Law; Julian C. Juergensmeyer, Professor of Law; Juan F. Perea, Assistant Professor of Law; George L. Dawson, Professor of Law; Anne L. Spitzer, Professor of Law; Don Peters, Professor of Law; David M. Richardson, Professor of Law.

Mr. GORE. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the American Association for the Advancement of Science endorsing the International Covenant on Civil and Political Rights.

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

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE,
Washington, DC, April 1, 1992.

Hon. AL GORE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GORE: The American Association for the Advancement of Science, the largest federation of scientific societies in the United States and the publisher of Science magazine, is on record in support of U.S. ratification of the International Covenant on Civil and Political Rights (ICCPR) and requests that the Senate give its advice and consent on the Covenant. Our recommendation is based on three considerations: (1) Many of the rights set out in the ICCPR are vital to maintain scientific and academic freedom. The ICCPR protects such rights central to the conduct of science as the right to liberty and security of person, freedom of thought, conscience, and religion; freedom from arbitrary deprivation of life; freedom of movement and choice of residence; and freedom of association. (2) Scientists in many countries experience violations of their human rights. In 1992, the American Association for the Advancement of Science documented violations ranging from the government revocation of academic degrees, demotions or dismissals, to arrests and arbitrary detentions, "disappearances," and extrajudicial killings of 109 foreign scientists, engineers, and health care professionals. (3) Support would constitute a humanitarian gesture and a commitment to the advancement of humankind. Infringements of human rights not only hinder the pursuit of scientific inquiry, but also adversely affect the progress and potential of human society. We believe that ratification of the ICCPR would greatly enhance the international legal framework that is intended to protect the human rights of all peoples, including scientists.

Sincerely,

RICHARD S. NICHOLSON.

COVENANT ON CIVIL AND POLITICAL RIGHTS

Mr. MOYNIHAN. Mr. President, I am pleased that the Senate is moving to give its advice and consent to the ratification of the Covenant on Civil and Political Rights. This covenant reflects the principles articulated in our own Bill of Rights. U.S. ratification will both strengthen the cause of international human rights and improve the ability of the United States to play a strong and constructive role in enforcing these standards.

Some have raised concerns about the standards in the covenant having to do with free speech. I strongly support the administration's reservation on this provision and believe that by ratifying the covenant the United States will be in a position to help prevent misinterpretation and abuse of this provision.

Others have raised the legitimate concern that the number of reservations in the administration's package might imply to some that the United States does not take the obligations of the covenant seriously. It should be noted, however, that the United States has accepted the overwhelming majority of the obligations of the covenant without reservation. Even though the covenant is non-self-executing, these will now become binding international obligations of the United States.

Moreover, it is possible to place a wholly different interpretation on the administration's package of reservations. The administration has not taken a blanket, or catchall reservation. It has not said that our domestic practices, wherever they differ from the covenant, are always superior. Rather, it has undertaken a meticulous examination of U.S. practice to ensure that the United States will in fact comply with the obligations that it is assuming. This can certainly be viewed as an indication of the seriousness with which the obligations are regarded rather than as an expression of disdain for the obligations. Certainly, there was a time when the nations of the totalitarian block ratified obligations without reservation—obligations that they had no intention of carrying out. Far better to ratify with the firm intention of living up to the covenant's terms.

Finally—and importantly—let none assume that a vote for the covenant is equivalent to acquiescence in any particular domestic practice. It should be clear that a vote in favor of giving the Senate's consent to ratification does not imply approval of each and every reservation, understanding and declaration in the administration's package. Some parts of the package deserve strong support, as in the case of the reservation on speech, which I have already mentioned, and U.S. acceptance of the jurisdiction of the Human Rights Committee under article 41. But a Senator might well conclude that it is in the interests of the United States to ratify the covenant with this package of reservations even if that Senator disagrees strongly with a particular domestic practice which has prompted a reservation. Some of those practices are most controversial and I know that many Senators who will vote to give consent to ratification will nonetheless continue their efforts to change these domestic practices in the committees of jurisdiction in the Senate. The two are not inconsistent in the least.

To say again, Mr. President, I believe that the decision of the President to request the Senate's consent to ratification is an important step—one which builds upon the Senate's consideration of the Genocide Convention, the Torture Convention and the International Labor Organization Convention on Forced Labor. I am pleased that the United States is moving to support these important human rights standards.

Mr. MITCHELL. Mr. President, I ask for a division vote.

The PRESIDING OFFICER. A division vote is requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

In the opinion of the Chair, two-thirds of the Senators as present has voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on December 16, 1966, and signed on behalf of the United States on October 5, 1977 (Executive E, 95-2), subject to the following Reservations, Understandings, Declarations and Proviso:

I. The Senate's advice and consent is subject to the following reservations:

(1) That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.

(2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

(3) That the United States considers itself bound by Article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.

(4) That because U.S. law generally applies to an offender the penalty in force at the time the offense was committed, the United States does not adhere to the third clause of paragraph 1 of Article 15.

(5) That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provi-

sions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 Article 10 and paragraph 4 of Article 14. The United States further reserves to these provisions with respect to individuals who volunteer for military service prior to age 18.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Covenant:

(1) That the Constitution and laws of the United States guarantee all persons equal protection of the law and provide extensive protections against discrimination. The United States understands distinctions based upon race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status—as those terms are used in Article 2, paragraph 1 and Article 26—to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination, in time of public emergency, based "solely" on the status of race, color, sex, language, religion or social origin not to bar distinctions that may have a disproportionate effect upon persons of a particular status.

(2) That the United States understands the right to compensation referred to in Articles 9(5) and 14(6) to require the provision of effective and enforceable mechanisms by which a victim of an unlawful arrest or detention or a miscarriage of justice may seek and, where justified, obtain compensation from either the responsible individual or the appropriate governmental entity. Entitlement to compensation may be subject to the reasonable requirements of domestic law.

(3) That the United States understands the reference to "exceptional circumstances" in paragraph 2(a) of Article 10 to permit the imprisonment of an accused person with convicted persons where appropriate in light of an individual's overall dangerousness, and to permit accused persons to waive their right to segregation from convicted persons. The United States further understands that paragraph 3 of Article 10 does not diminish the goals of punishment, deterrence, and incapacitation as additional legitimate purposes for a penitentiary system.

(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require the provision of a criminal defendant's counsel of choice when the defendant is provided with court-appointed counsel on grounds of indigence, when the defendant is financially able to retain alternative counsel, or when imprisonment is not imposed. The United States further understands that paragraph 3(e) does not prohibit a requirement that the defendant make a showing that any witness whose attendance he seeks to compel is necessary for his defense. The United States understands the prohibition upon double jeopardy in paragraph 7 to apply only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the Federal Government or a constituent unit, as is seeking a new trial for the same cause.

(5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.

(2) That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, Article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to Article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

(3) That the United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under Article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant

(4) That the United States declares that the right referred to in Article 47 may be exercised only in accordance with international law.

IV. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

Nothing in this Covenant requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

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

The motion to lay on the table was agreed to.

THE EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Executive Session to consider the following nomination:

Calendar No. 546. Edward J. Perkins to be U.S. Representative in the Security Council of the United Nations;

Calendar No. 547. Thomas R. Pickering to be Ambassador to India; and Nominations on the Secretary's Desk in the Foreign Service.

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

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF STATE

Edward Joseph Perkins, of Oregon, a career member of the Senior Foreign Service, Class of Career Minister, to be the Representative of the United States of America to the United Nations with rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

Thomas R. Pickering, of New Jersey, a career member of the Senior Foreign Service, with the personal rank of Career Ambassador, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to India.

LEGISLATIVE SESSION

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

ORDER FOR STAR PRINT—SENATE JOINT RESOLUTION 166

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate Joint Resolution 166 be star printed to reflect the following changes which I now send the desk.

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

AUTHORITY FOR COMMITTEE TO REPORT

Mr. MITCHELL. Mr. President, I ask unanimous consent that on Friday, April 3, from 12 noon until 6 p.m. the Senate Committee on the Budget may file a concurrent budget resolution.

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

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NOS. 102-27 AND 102-28

Mr. MITCHELL. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following two treaties transmitted to the Senate today by the President of the United States:

Partial Revision (1988), Radio Regulations, relating to Space Radiocommunications Services (Treaty Document No. 102-27); and

Partial Revision (1985), Radio Regulations, relating to Broadcasting-Satellite Service in Region 2 (Treaty Document No. 102-28).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be

printed; and that the President's messages be printed in the RECORD.

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

The messages of the President read as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the 1988 Partial Revision of the Radio Regulations (Geneva, 1979), signed on behalf of the United States at Geneva on October 6, 1988, and the United States statement as contained in the Final Protocol. I transmit also, for the information of the Senate, the report of the Department of State with respect to the 1988 Partial Revision.

The 1988 Revision constitutes a partial revision of the Radio Regulations, to which the United States is a party. The primary purpose of this revision is to update the existing Regulations to guarantee for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services. The revised Regulations are consistent with the proposals of and positions taken by the United States at the Second Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It (ORB-88).

At the time of signature, the United States joined 20 countries in submitting a statement in response to a statement by Colombia and Ecuador concerning claims of sovereign rights over segments of the geostationary-satellite orbit. The specific statement, with reasons, is given in the report of the Department of State.

The 1988 Partial Revision entered into force on March 16, 1990, for governments which, by that date, had notified the Secretary General of the International Telecommunication Union of their approval thereof.

I believe the United States should become a party to the 1988 Partial Revision, which provides new means and greater flexibility in securing access to the geostationary-satellite orbit and the frequency spectrum allocated to space services. It is my hope that the Senate will take early action on this matter and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *April 2, 1992.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Partial Revision of the Radio Regulations (Geneva, 1979), signed on behalf of the United States at Geneva on September 15, 1985, and the United States reservation and statements as contained in the Final Protocol. I transmit also, for the information of the Senate, the report of the Department of State with respect to the 1985 Partial Revision.

The 1985 Revision constitutes a partial revision of the Radio Regulations (Geneva, 1979), to which the United States is a party. The primary purpose of the revision is to incorporate into the Radio Regulations the decisions of the Regional Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in Region 2 (essentially the Western Hemisphere). The Broadcasting-Satellite Service is a radiocommunication service in which signals transmitted or retransmitted by satellites are intended for direct reception by the general public. The Partial Revision is broadly consistent with the proposals of and positions taken by the United States at the First Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (ORB-85).

At the time of signature, the United States submitted a reservation concerning technical matters included in the Revision; a statement in response to statements by Indonesia, Colombia, and Ecuador concerning claims of sovereign rights of segments of the geostationary-satellite orbit; and a statement in response to Cuba's characterization of Radio Marti as "the use . . . by the Government of the United States, of the radio spectrum as a means of aggression . . . ." The specific reservation and statements, with reasons, are given in the report of the Department of State.

The 1985 Partial Revision of the Radio Regulations entered into force on October 30, 1986, for governments which, by that date, had notified the Secretary General of the International Telecommunication Union of their approval thereof.

I believe the United States should become a party to the Partial Revision, which will facilitate the development of a broadcasting-satellite service in the United States. It is my hope that the Senate will take early action on this matter and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *April 2, 1992.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and treaties which were referred to the appropriate committees.

(The nominations and treaties received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:37 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 1743) to amend the Wild and Scenic Rivers Act by designating certain rivers in the State of Arkansas as components of the National Wild and Scenic Rivers System, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 1150) to reauthorize the Higher Education Act of 1965, and for other purposes, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses on the amendments of the House, and appoints the following as managers of the conference on the part of the House:

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendments, and modifications committed to conference: Mr. FORD of Michigan, Mr. GAYDOS, Mr. MILLER of California, Mr. KILDEE, Mr. WILLIAMS, Mr. HAYES of Illinois, Mr. SAWYER, Mr. PAYNE of New Jersey, Mrs. LOWEY of New York, Mrs. UNSOELD, Mr. WASHINGTON, Mr. SERRANO, Mrs. MINK, Mr. ANDREWS of New Jersey, Mr. JEFFERSON, Mr. REED, Mr. ROEMER, Mr. GOODLING, Mr. PETRI, Mr. COLEMAN of Missouri, Mrs. ROUKEMA, Mr. GUNDERSON, Mr. ARMEY, Mr. HENRY, Ms. MOLINARI, Mr. BARRETT, and Mr. KLUG.

As additional conferees from the Committee on Foreign Affairs, for consideration of section 613 of the Senate bill, and modifications committed to conference: Mr. FASCELL, Mr. BERMAN, Mr. WEISS, Mr. BROOMFIELD, and Ms. SNOWE.

The message also announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

he Panama Canal pursuant to the Panama Canal Treaty of 1977; and

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MEASURES REFERRED

The following bill and joint resolution were read the first and second times by unanimous consent, and referred as indicated:

he Panama Canal pursuant to the Panama Canal Treaty of 1977; to the Committee on Armed Services.

e on the Judiciary.

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. DASCHLE (for himself, Mr. WOFFORD, and Mr. SIMON):

S. 2513. A bill to provide universal access for all Americans to basic health care services and long-term care services; to the Committee on Finance.

By Mr. BUMPERS (for himself, Mr. DURENBERGER, Mr. NUNN, Mr. GRASSLEY, Mr. LEVIN, Mr. SHELBY, Mr. LIEBERMAN, Mr. BREAUX, Mr. INOUYE, Mr. REID, Mr. KERRY, Mr. FOWLER, Mr. DODD, Mr. GLENN, and Mr. DOMENICI):

S. 2514. A bill to amend the Internal Revenue Code of 1986 to allow taxpayers a bad debt deduction for certain partially unpaid child support payments and to require the inclusion in income of child support payments which a taxpayer does not pay, and for other purposes; to the Committee on Finance.

By Mr. DECONCINI (for himself, Mr. GRAHAM, Mr. AKAKA, and Mr. DASCHLE):

S. 2515. A bill to authorize the establishment of job training programs for unemployed veterans and persons who have been recently separated from the Armed Forces, to pay certain assistance and benefits to employers of such veterans and persons to defray certain costs relating to the provision of such training, and for other purposes; to the Committee on Veterans Affairs.

By Mr. BINGAMAN (for himself, Mr. NUNN, Ms. MIKULSKI, Mr. KERREY, and Mr. LIEBERMAN):

S. 2516. A bill to amend the National Security Act of 1947 to revise the functions of the National Security Council and to add the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative to the statutory membership of the National Security Council; to the Committee on Armed Services.

S. 2517. A bill to amend title 10, United States Code, to rename the Defense Advanced Research Projects Agency as the National Advanced Research Projects Agency, to expand the mission of that agency, and for other purposes; to the Committee on Armed Services.

By Mr. DODD (for himself, Mr. GRAMM, Mr. RIEGLE, Mr. GARN, Mr. D'AMATO, Mrs. KASSEBAUM, Mr. WIRTH, Mr. SANFORD, Mr. MACK, and Mr. KASTEN) (by request):

S. 2518. A bill to amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others through exempted offerings under the Securities Act and through investment pools that are excepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GARN:

S. 2519. A bill to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY (for himself, Mr. SIMPSON, Mr. DODD, and Mr. LUGAR):

S. 2520. A bill to support efforts to promote democracy in Haiti; to the Committee on Foreign Relations.

By Mr. HEFLIN:

S. 2521. A bill to make techincal and procedural amendments pertaining to the United States Court of Federal Claims and the judges thereof in order to promote efficiency and fairness, and for other purposes; to the Committee on the Judiciary.

By Mr. SIMON:

S. 2522. A bill to direct the United States Sentencing Commission to make sentencing guidelines for Federal criminal cases that provide sentencing enhancements for hate crimes; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself, Mr. JOHNSTON, Mr. MITCHELL, Mr. LAUTENBERG, Mr. BREAUX, and Mr. D'AMATO):

S. 2523. A bill to authorize the Secretary of the Army to develop an engineering strategy to minimize adverse environmental impacts of overflows and discharges from combined stormwater and sanitary sewer systems, and for other purposes; to the Committee on Environment and Public Works.

By Mr. NUNN (for himself and Mr. WARNER):

S. 2524. A bill to provide for the temporary continuation of the current Deputy National Security Adviser in a flag officer grade in the Navy; to the Committee on Armed Services.

S. 2525. A bill to amend title 10, United States Code, to make the Vice Chairman a member of the Joint Chiefs of Staff, to provide joint duty credit for certain service; to the Committee on Armed Services.

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. MCCAIN, Mr. MURKOWSKI, Mr. DURENBERGER, Mr. SIMON, Mr. KASTEN, Mr. DASCHLE, Mr. HATCH, Mr. PRYOR, Mr. REID, and Mr. INOUYE):

S. 2526. A bill to amend the Congressional Budget Act of 1974 to provide for truth in budgeting with respect to intragovernmental transactions involving trust funds; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports the other Committee has thirty days to report or be discharged.

By Mr. ADAMS (for himself, Mr. BRADLEY, and Mr. GORTON):

S. 2527. A bill to restore Olympic National Park and the Elwha River ecosystem and fisheries in the State of Washington; to the Committee on Energy and Natural Resources.

By Mr. AKAKA (for himself, Mr. CRANSTON, Mr. DECONCINI, Mr. DASCHLE, and Mr. INOUYE):

S. 2528. A bill to amend chapter 37 of title 38, United States Code, to establish a pilot program for furnishing housing loans to Native American veterans, and for other purposes; to the Committee on Veterans Affairs.

By Mr. AKAKA (for himself and Mr. WALLOP) (by request):

S. 2529. A bill to provide for the transfer of certain lands to the Government of Guam, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STEVENS (for himself, Mr. SPECTER, Mr. WOFFORD, Mr. DOLE, Mr. THURMOND, Mr. BYRD, Mr. BOND, Mr. BROWN, Mr. BURNS, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CRAIG, Mr. JOHNSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DOMENICI, Mr. DURENBERGER, Mr. GARN, Mr. GORTON, Mr. GRAMM, Mr. HATFIELD, Mr. HELMS, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KASTEN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PRESSLER, Mr. RUDMAN, Mr. SIMPSON, Mr. SMITH, Mr. SYMMS, Mr. WARNER, Mr. AKAKA, Mr. DECONCINI, Mr. GORE, Mr. HEFLIN, Mr. KOHL, Mr. LEVIN, Mr. MOYNIHAN, Mr. SASSER, Mr. SHELBY, Mr. RIEGLE, Mr. LIEBERMAN, Mr. BINGAMAN, Mr. GRASSLEY, Mr. ROCKEFELLER, and Mr. SANFORD):

S. 2530. A bill to establish the John Heinz Competitive Excellence Award; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GORE (for himself, Mr. CRANSTON, and Mr. PELL):

Malaysia; to the Committee on Foreign Relations.

By Mr. DANFORTH (for himself, Mr. BAUCUS, and Mr. BINGAMAN):

that distort international trade and injure United States industries; to the Committee on Finance.

By Mr. SPECTER (for himself, Mr. THURMOND, Mr. D'AMATO, Mr. BURNS, and Mr. STEVENS):

onor on April 26, 1992; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself, Mr. WOFFORD, and Mr. SIMON):

S. 2513. A bill to provide universal access for all Americans to basic health care services; to the Committee on Finance.

AMERICAN HEALTH SECURITY PLAN

Mr. DASCHLE. Mr. President, along with Senator WOFFORD and Senator SIMMON I am today introducing the American Health Security Plan of 1992. Our goal is to do for health what Social Security has done for retirement. The bill calls for comprehensive reform of our health care system to control costs and to guarantee coverage for every American. It preserves the best features of our private delivery system while adopting a far superior framework to confront the problems that so clearly afflict that system.

The American Health Security Plan recognizes that those problems are comprehensive and, as such, require a comprehensive response. It is our view that this plan provides the best solutions to each of the five categories of health care problems afflicting our system and our people, and that any credible plan must be capable of making a similar claim.

The first problem is one that we addressed on the floor about a month ago. That problem is cost. Every day, Americans spend $2 billion on health care. This year alone, we will be spending $817 billion on our health care system. That comes out to $8,000 per family, That $8,000 is expected to reach $14,000 by the year 2000. Meanwhile, health care costs consume 14 percent of our

gross national product and by the end of the decade that 14 percent will have grown to 20 percent.

Last year, health care costs exceeded business after tax profits; undermining the competitiveness of our Nation. Clearly, Mr. President, cost is the first and in some ways the most visible of the five categories of problems that we face.

The second problem is access. We are the richest Nation in the world, yet over 34 million people in this country have no health insurance. Twice that number are without coverage at some point during the year. One-fourth of those people are children. Furthermore, 3 out of 10 Americans today are the victims of job lock, unable to leave their jobs because of fear of losing coverage.

We are the only industrialized country in the world other than South Africa that fails to ensure its citizens have basic health care coverage. But it is not only a problem related to one's ability to acquire insurance. South Dakotans also suffer from a lack of access because of geography. Many parts of our State have no doctor. We are 60 doctors short in South Dakota today. In many other parts of the country, rural and urban individuals have no access to health care. That is a serious access problem.

The third problem has to do with allocation, both in the way we collect our health care dollars and the way we spend them. No one can convincingly defend our system's method of collecting health dollars. The fact is, some people pay a lot and get a little coverage. Some people pay a little and get a lot. It has to do with where you work where you live, the conditions of the workplace, and a number of other factors.

In my view an even more serious problem relates to the way we spend our money. Health care services in any society can be seen as a pyramid. At the base of the pyramid you have preventive care, primary care, wellness promotion—the most effective, least costly, and, in most societies, the most accessible forms of health care.

As you work your way up the pyramid you get more sophisticated, more individualized, more expensive services, until you get to the very top of the pyramid, where you have bone marrow transplants and heart transplants; the most unique health care services, sometimes only provided in this country.

Every other society guarantees access to health care at the base of the pyramid and then they work their way up the pyramid until the money runs out. If you are above that line on the pyramid in any other society you either do not get access to those health care services when you need them or you have to wait.

Our society is different. It always has been. We guarantee access to health care at the top of the pyramid and then work our way down until the money runs out. People have access to the most sophisticated forms of health care in an emergency room. But try to walk in and ask for some primary care without the resources to do so, and you will be turned away. We have to address this allocation problem, because the factor alone has a significant impact on the cost of our health care system today.

A second, equally fundamental and problematic matter relating to allocation, has to do with the amount of money we spend on administration. Twenty to 25 percent of the money we spend today on health care goes to administrative costs, bureaucracy, and paperwork.

We have a "gas-guzzler" system. If we got 4 or 5 miles to the gallon driving a car from here to Baltimore, we would be looking for another car. But today we spend 20 to 25 percent of our health care dollars driving our health care system. Just think how much we could save if we could divert $100 billion or $150 billion away from paperwork to preventive and primary care Mr. President, this is a very serious issue that must be addressed.

The fourth category of problems that we have to deal with is unnecessary medical care. Many analysts believe that up to 30 percent of the care we receive today is unnecessary—30 percent. This care is being provided for a lot of different reasons. One is defensive medicine. The fact is, doctors are doing things that they do not believe are medically necessary because they want to defend themselves against lawsuits. This is understandable.

Second, many doctors and other providers have a proprietary interest in equipment and clinics, and obviously, these investors have to be good business people as well as good providers. Studies reveal that these doctors tend to use devices, equipment, and clinics in which they have a proprietary interest a lot more than is medically required.

The third aspect of unnecessary care relates to technology—if it is there, we use it. It is almost like our astronauts today deciding to go to Mars just because we know we can. Forget the cost. We can do it.

Often, because technology is there, whether it is prescription drugs or a sophisticated piece of equipment, we overuse our technology. This, too, drives the cost of care.

The fourth factor is ignorance. Doctors will tell us in some cases they do not know a procedure's outcome on a consistent basis, but they provide the service anyway, just to be sure. And patients almost always ask more questions when they buy an automobile than when they get health care today.

There is no ability to comparison shop and, there is no way to determine before we get health care how much is it going to cost.

Finally, the fee-for-service structure itself contributes to this problem. The more fees, the more income and, of course, fees are generated by services.

So services lead to fees, fees led to income and income leads to an incentive to provide more services. All of those factors, Mr. President, are clearly responsible for the fact that 30 percent of the care today may be unnecessary.

Finally, the fifth and last category of problem is the hassle factor, the "user unfriendliness" of our system, the fact that patients, providers, and administrators alike tell us that the system is too complicated and, too costly. The AMA has indicated that doctors today spend 80 hours a month on paperwork. Eighty hours a month, Mr. President, is equivalent to spending 2 full weeks of work every month on paperwork alone. Not providing services, not providing care, not using their training, but providing the answers to question after question, filing claim after claim.

Over the last 14 months, we have studied how other countries have responded to these problems. We have looked at virtually every system in every industrialized nation. We have studied them extensively, and we have concluded that, if you were to look at all the systems we have in the world today, they could be placed on a spectrum from the most public to the most private systems. The most public systems are those we find in some European countries, like Scandinavia and Britain. Those systems are virtually all public. They are run very similarly to the systems in our country that provide care to veterans and military personnel.

As you work your way across the spectrum, you become quasi-public to the point where you get to our system, which is really the most private system in the world today. Yet most people are surprised to learn that it is really partially private and partially public. On the public-to-private spectrum, it is only about halfway to the entirely private side.

In fact, last year, about 40 percent of all health care was paid for by Government. This year, it is expected that approximately $325 billion of our health care system will be paid for by the Government. Through Medicare and Medicaid, through the Indian Health Service, the Veterans' Administration and the military. Thirty percent is all that is paid for by private insurance, approximately $245 billion this year, 25 percent paid for out-of-pocket, and 5 percent, about $40 billion, paid for by charity.

So we have a quasi-public quasi-private system. I think it is appropriate for us to ask, before we decide where on that public-to-private spectrum we would put a new American system,

what we would want to acquire, and what is it about our current system that we would want to retain?

We thought about that. We have looked at the other systems. We have concluded on the basis of many, many interviews with people around the country, with providers, with administrators, with patients, that there are a number of characteristics that we either want to acquire or retain in a new system.

I believe that we want to acquire the absolute ability to control costs. If we cannot do that, then I do not think we can even get in the door in terms of offering a system that will deal with the problem that most people believe is our most serious one.

I think we also have to acquire the ability to ensure universal access. We have to retain our superiority in biomedical technology. The American health care system is the most technologically advanced in the world and that technology is one of the highlights, one of the advantages of our system, and we want to retain that advantage.

We want to retain personal choice. I know in my State people want the opportunity to choose their doctor and choose their hospital. Personal choice is an American value that we want to retain.

Utilizing the private sector as well is something we believe in very strongly, since we are a capitalist system. We have a health care system largely delivered through the private sector, and that aspect of the system has worked well. We want to retain to a large degree the significant role of the private sector in our health care system.

Sixth, we want to acquire portability. That 30 percent job lock is unacceptable. People should not have to stay in their job just to retain their health insurance. If someone wants to move to South Dakota, to West Virginia or Pennsylvania they should be confident that they can get health care. Portability is critical to obtain.

Finally, going back to my pyramid, I think we have to obtain preventive care, wellness promotion. We have to ensure that people have access at the base of the pyramid rather than at the very top. We need to reallocate resources to ensure we are providing the most effective, least costly care.

Mr. President, it really comes down to three questions, regardless of how we look at this problem: Do we want to control what we spend? Do we want to control what we spend it on? And can we construct an effective mechanism to do both?

Those are the questions. I really believe we have two choices. The first choice is to look at a health care system that has worked well in another country and adapt that system to America. Let us go to Canada, take their system and bring it back, or let us go to Germany or France. That is one choice.

The other choice is to take an American model, adapt medical principles and policies to that American model, and make it work here.

I have come to the conclusion, after carefully considering both options, that it would not be wise for us to adapt a foreign system to America; there is no foreign system that truly encompasses those values that I just addressed, one that has all of the characteristics that are capable of addressing all five problems effectively. So I have come to the conclusion that it is fruitless for us to take a Canadian or a German system and try to make it work here.

I was interested in some information that came across my desk over a year ago, information relating to the history of the monetary system that we have in this country and how it all began. It led me to read several books, including the biography of Woodrow Wilson.

At the turn of the century, there was a great debate about how this country would begin effectively controlling its monetary supply.

William Jennings Bryan—about whom the President pro tempore could, I am sure, speak so eloquently—made a proposal that evoked an extraordinary response among the American people. His view was that all we had to do is control the monetary supply by adopting a silver standard; his "Cross of Gold" speech is one we heard about in history lessons in high school and college.

But most people, including Woodrow Wilson, concluded that that was too simplistic, that neither a gold nor a silver standard would suit our purposes. After working for a number of years, he came to the conclusion that what we really needed to do was to create a Federal Reserve System that would be responsible for doing two things: No. 1, controlling the monetary supply; and, No. 2, allocating resources in that monetary supply through the private sector.

That system, for the last 80 years, has worked very well. Of course, I do not agree in every case with decisions made by the Federal Reserve Board. But, overall, the Federal Reserve System works well.

Mr. President, we are facing the same two questions today with regard to health care: Can we find an effective mechanism using the private sector that allows us to control our health care resources and can we reallocate those resources in a more effective way to the needs that we have today in our country?

And so we begin with a proposal to do with our health care system what we have done with monetary policy, to create a Fed, a depoliticized board to answer those two questions effectively. The American health security plan establishes such a mechanism for health. It abolishes Medicare, it abolishes Medicaid, it abolishes the Health Care Finance Administration, and it abolishes CHAMPUS.

It would begin by creating a basic benefits plan for all Americans which would include the following: Acute care, catastrophic care, primary and preventive care, long-term care, mental health care, home health care, and prescription drugs. A Federal Health Board similar in size and responsibility to the Federal Reserve Board would be created to accomplish several very important functions.

First, cost control. The Fed would determine the overall amount required to meet our country's health needs. Second, the Fed would ensure that every citizen had access to health coverage. Third, the Fed would allocate resources and determine eligibility for benefits. Fourth, the Fed would reduce administrative costs. Fifth, the Fed would ensure that our health system has quality control.

The system would be funded in four specific ways. First, roughly 40 percent would be funded, as it is provided today, through general revenues. About 60 percent of the Federal commitment would be in the form of a progressive public premium paid by individuals and businesses. Premiums could be paid weekly, monthly, or annually and would not be employment based. Businesses at long last would rid themselves of the burdensome responsibilities of providing health insurance for each of their employees. Twenty percent of the overall cost of the plan would be provided in the form of a match by the States. And finally, copayments would be required of patients.

Premiums would be collected in a health trust fund and allocated back to the States, or consortia of States, in the form of a block grant, allocated on the basis of a number of factors, including population and need of the State. And States, independently or in consortia, would have the sole responsibility for ensuring its citizens are covered under the plan and for allocating resources to the facilities as well as to the providers.

Mr. President, the private insurance industry would have three very specific roles. First, companies could contract with the States to provide the insurance products. Second, they would be encouraged to provide supplemental benefits. And finally, once businesses and individuals have paid the public premium, people could opt out entirely and purchase a competitive private plan.

The emphasis of this plan is clearly on cost containment. This emphasis is the main advantage of our plan over others thus far introduced. Our bill establishes an independent Federal

Health Board insulated from politics to determine a fixed national health care budget.

Second, health facilities would comply with State-negotiated budgets. Health care practitioners will be reimbursed according to a relative value fee schedule.

Third, the emphasis will be on primary and preventive care.

And fourth, the major goal will be to eliminate unnecessary care by implementing malpractice reform, increasing funding of outcomes research, conveying consumer pricing information, and evaluating the appropriateness of technologies.

And finally, cost containment would be achieved by deemphasizing care provided by specialists and by creating incentives for using nonphysician practitioners whenever possible.

The introduction of this bill today, Mr. President, is not meant to be the final word. We emphasize today that this legislation is a discussion draft. We look for ideas for improvement. We look for constructive criticism. We look for ways in which to resolve questions pertaining to the concept of this plan or any one of its provisions.

Let me emphasize that the core concepts represented here are identical to those proposed by the majority leader and sponsored in health America. Our bill calls for universal access and effective cost control. So does that bill. Our bill establishes an independent Federal Health Board. So does that bill. Our bill calls upon States to administer the new health system in large measure. So does that bill. Our bill calls for negotiations between payers and providers on rates and malpractice reforms. So does that bill. Our bill calls for freedom of choice of providers and a crucial role for the private sector. So does that bill. Our bill fashions a uniquely American response to our health care problems. So does health America. Both bills acknowledge the fundamental need for comprehensive reform, and both bills' sponsors strongly believe that the American people desire it as much as we do.

I truly believe, Mr. President, that comprehensive health care reform is not a question of if, but when. For the sake of all Americans, I sincerely hope that it is soon.

Mr. President, I ask unanimous consent, following remarks made by the distinguished Senator from Pennsylvania, the text of the bill as well as a summary of the American health security plan be inserted in the RECORD.

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

Mr. DASCHLE. Mr. President, I now yield the floor to the distinguished Senator from Pennsylvania [Mr. WOFFORD].

The PRESIDENT pro tempore. The Senator from Pennsylvania [Mr. WOFFORD] is recognized for 21 minutes and 22 seconds.

Mr. WOFFORD. Mr. President, I have joined with Senator DASCHLE in sponsoring the American health security plan because it provides a uniquely American approach to fulfilling a self-evident truth that health care is a fundamental human right, not a privilege, not a perk, and not simply another commodity to be bought or sold on the marketplace.

Senator DASCHLE has so vividly stated some of the self-evident truths about health care, and I would like to add a few more, particularly the one that is found in the very idea of security that is central to this bill, not only in name but in substance. Insecurity is a fact of life almost every American feels today as to health care; the insecurity that comes from the fear, the almost universal fear that when you need health insurance the most—when you change jobs, lose your job, get in an accident, have a sick child—and you fear that you will not be covered.

In his address on the "four freedoms," Franklin Roosevelt talked about adequate medical care as a basic human right. Fifty years later, FDR's Social Security system provides the "freedom from want" he promised for older Americans. But we have yet to fulfill a vital aspect of "freedom from fear" in those four freedoms: The fear that health care will not be affordable or available to you when you need it.

With every press account and every new statistic, we see that insecurity and fear spreading to more and more American families. The purpose of this bill is to end that insecurity and that fear.

This bill, indeed, shares much with other comprehensive reform proposals already put on the table by our Democratic colleagues, beginning with the guarantee of health care to every American throughout their lives. The bill developed so carefully by Senators MITCHELL, KENNEDY, ROCKEFELLER, and RIEGLE, and by the Labor and Human Resources Committee makes that guarantee of universal health care, as do other proposals.

Our bill also shares with those other comprehensive reform bills the determination to contain the out-of-control costs of our current health care system.

Unlike some of those proposals, however, our bill breaks the existing link between health coverage and employment, a link, as Senator DASCHLE has just put to us, that increasingly ties people to jobs long after they should or could have left for something better.

That link between health care and jobs not only tends to lock people into jobs; it has another great disadvantage: it puts employers in the business of arranging for health care instead of making better products at competitive prices, and paying more to their employees.

Our bill moves us away from an employer-based system to a unified, simplified State-based system of health care for all Americans. It retains and builds on the best features of the American health care system, maintaining the patient's choice of doctor, and preserving the variety of health care delivery systems that have evolved in recent years, including Blue Cross plans and HMO's. Our bill encourages States to experiment with their own unique approaches to fulfilling the basic needs that exist, such as the initiative proposed by my creative Peace Corps colleague from California, Insurance Commissioner John Garamandi; the health reform proposals just advanced by our Governor in the State of Pennsylvania, Robert Casey; and the universal access program of the State of Hawaii.

The bill also promotes the development of new, organized delivery systems that provide one-stop shopping for the entire range of health care needs. States would be free to contract with private plans and managed-care networks to deliver efficient and high-quality care. The State agencies administering the plan would be nonprofit organizations that could themselves be important innovations in public-private partnerships.

Finally, the bill addresses our Nation's growing long-term care crisis. Today when families need long-term care, they too often have to spend themselves into bankruptcy before they can qualify for Medicaid. The President ignored this problem of long-term care in his health proposals last month. This bill does not ignore it. It provides essential long-term care coverage to all those who need it.

Of course, there is no silver bullet to solve our health care crisis, no single perfect solution that is appropriate to all people, states, and regions. But let us not use complexity as an excuse for doing nothing. An American plan will not be perfect. Nor will it emerge full-blown in one year, in one piece of legislation, but let us begin.

Let us begin this year, and develop by trial and error as we learn from experience. And the first experience to learn from is what is wrong with our system today. It would be hard to design a plan as flawed as the American health care status quo, a system that costs too much, covers too few, and burdens businesses, families, doctors, and hospitals with a level of paperwork and complexity that is beyond belief.

Health care is symbolic and symptomatic, I think, of the frustration many Americans are feeling with politics and politicians, with Washington's failure to make hard choices and to respond to the real problems people face in their daily lives. Since last November, even President Bush has acknowledged the need for change. But the program he presented would neither effectively

control costs nor provide universal access. Our bill enables us to do both.

In a true sense this is, above all, an enabling bill. It establishes the structure for making the hard choices required. Our proposed Federal-State public and private structure would engage key parties in a national and local decisionmaking process. It is a structure designed to limit partisan politics in that process.

Mr. President, as the historian that you are, let me for a moment divert and myself try to be one. American history provides a rough parallel—the Declaration of Independence, the Articles of Confederation, and, finally, the U.S. Constitution.

In 1991, it was self-evident to voters in Pennsylvania that health care is an inalienable right. A majority of the Members of this body, like so many leaders of our national life, have declared their belief that this fundamental right must be made a reality. I believe Congress is ready to make such an affirmation. But it is time to go beyond the stage of declaration.

The President has proposed a weak structure for health care which, like the Articles of Confederation of old, is not up to the challenge. It is not strong enough to contend with all the forces driving up the costs of the health care system nor comprehensive enough to include all Americans. In the 1780's, the Founders responded to an increasingly chaotic situation by framing a more enduring structure for our Federal system.

The bill we are now proposing frames a new constitution for American health care. Like our original Federal Constitution, its strength lies in its federalism, in national action where necessary and a strong role for the people of each State to make their own choices, a federalism with State-by-State flexibility and innovation.

Senator DASCHLE has already sketched out from the top down how much better this system will be than the current maze of shifting costs and overlapping bureaucracies. I have a chart showing the maze of our present system today. I ask my colleagues to look at this chart and learn from it.

But I want to focus now on how our proposed simplified structure will improve things for American families from the bottom up. The bill establishes a universal, portable system in which each of us has a single health card, like this Blue Cross-Blue Shield card available to Federal employees government-wide who choose that plan. Every American will have such a card that will entitle every one of us to basic health services.

Let me give you a few examples.

Example No. 1: Today when a 61-year-old Pennsylvania woman needed a long hospital stay to deal with a variety of serious illnesses, the result was a stack of bills 191 pages long and still growing. Under our bill, with the national electronic data system, the health card would replace most of that paperwork.

Example No. 2: If you are a business owner who provides health benefits to your employees, right now you have to worry about costs often jumping 20 percent a year.

Under this bill, that grinding inflation that has been eating into your profits will be stopped by the "Federal Reserve System" of the health care industry that we will be establishing. You will not have to focus your time and your energy as a businessman on shopping for, arguing about, and negotiating with insurance companies. You will not have to hire entire benefit staffs to handle the paperwork employers now have to handle under the current employer-based system.

If you are a union member working at that business, you will be entitled to the basic, comprehensive health care benefits for all Americans, and your union can still bargain for the employer to pay your share of the public premium. The union can also bargain for extra benefits over and above the basic package of health benefits fundamental for every American.

A third example: If you are a parent, a new parent whose child has a chronic illness, you work at a job, and you find a better, higher paying job in another business across town or in another State. Today you are likely to be stuck. The other job might not offer health insurance, or the coverage might exclude you and your family because of your child's preexisting condition. Under this plan, no families would ever face that problem. Your coverage would follow you across town or across the country.

Consumers are not the only ones whose lives will be easier. If you are a doctor, if you work in a hospital, you will be relieved of much of the staggering current burden of paperwork, and American companies will be able to focus on their products and productivity, not on providing health care.

These are some of the goals this bill is designed to achieve. This is not the only possible approach or the only possible step forward for us to take this year. I have already said that the "play-or-pay" approach developed by some of our Democratic colleagues, especially with amendments added to strengthen its cost-control measures and include essential services like long-term care—can be an important step in the right direction.

Like our bill today, the Mitchell-Kennedy-Rockefeller-Riegle bill establishes clear standards for universal coverage that insurance carriers, HMO's, and Government programs would have to meet. That bill has many other valuable features that I would expect to be incorporated in comprehensive health care reform.

Senator KERREY'S bill with its bold and specific provisions is also an important contribution. And Senator WELLSTONE has put forward another clear cost-effective national health insurance model.

I also salute the work of the National Coalition for Health Care Reform chaired by Paul Rogers and Robert Ray with Presidents Ford and Carter as honorary cochairmen; the work of the Families U.S.A. Foundation, led by Phil Villers and Ron Pollack, and the work of the Committee for National Health Insurance, over many years chaired by Douglas Fraser and Melvin Glasser. These and many others agree on the many basic goals of comprehensive reform, and have worked hard toward achieving them.

There is an ad in the paper this very day, a full-page ad in the Washington Post, by the Committee for National Health Insurance, which I ask unanimous consent be printed in the RECORD.

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

[From the Washington Post, Apr. 2, 1992]

American Flag principles:
If anyone's excluded it's not real reform.
Cost controls must be real and enforceable.
A national-state partnership is needed.
Benefits must be comprehensive.
People want to choose their own doctor.
Quality of care must be protected.
Administrative waste has to be cut.
Private insurance should play a role.
Consumer voice must be heard and acted upon.
Piecemeal changes aren't enough.

Without each of these principles, health care reform in America just won't fly. America's had enough piecemeal solutions. It's time for a program that makes health care reform a practical, legislatively-passable reality.

The Health Security Partnership does just that. Rooted in efforts begun by the Committee for National Health Insurance in 1968, this is the only plan created by respected health experts, after years of careful work.

Unlike other plans, the Health Security Partnership tackles the entire problem—organization, access, delivery, quality and cost. So not only is it comprehensive and accessible to all, it's achievable—through pragmatic, enforceable cost constraints.

State and national budgets would be preapproved; and those state health budgets would not be permitted to rise faster than the national economy's growth. Administrative waste and duplication would be cut significantly. Incentives to organize services more efficiently would be built-in. Fees would be controlled by a regularized schedule. And carefully developed budgeting innovations would dramatically lower the cost of hospitals, nursing homes, physicians and prescription drugs. In fact, estimates indicate that rate of increase would drop and keep dropping each year the program operates.

Today, the Health Security Partnership gives America a unique chance to do the right thing. To replace our failing patchwork system with major reform, not major tradeoffs.

Write Congress and let them know you support that reform with the Health Security Partnership. And for complete details, contact the Committee for National Health Insurance. It's the totality and reality America's been waiting for.

The Committee for National Health Insurance. Where reform meets reality. 1757 N Street, NW., Washington, DC 20036 (202) 223-9685 Douglas Fraser, Chairman, Committee for National Health Insurance and former President, United Automobile Workers; Melvin Glasser, Director, Committee for National Health Insurance; Rashi Fein, Ph.D., Chairman, Technical Committee CNHI and Professor, Harvard Medical School.

Mr. WOFFORD. Every one of the tests put forth in that ad is a test this bill is designed to meet.

Indeed, over the past month, in discussions with those groups and with my colleagues, I find that we have more basic principles in common than we differ on details on how to apply them. For example, a remarkable 47 Democratic Senators signed our recent letter to the majority leader urging action this year on comprehensive health care reform.

The propositions agreed to by those Senators, and by the majority leader in his response to us, provides a good example of the consensus that is at hand, if we seize this day. We agreed in that letter that reform must:

Guarantee comprehensive health coverage to every American throughout your life, regardless of where you live and what your job is

Preserve individual choice of doctor and hospital

Contain skyrocketing costs

Improve the quality of care

Provide for long-term care

Cut unnecessary administrative costs and redundant paper work; and

Simplify a system that has become too complex, confusing and frustrating for patients and health care professionals alike.

Those are the principles we share. I have joined with Senator DASCHLE today, who has long been working on this bill in the context of the State of South Dakota and of the common good of our country, because I believe the approach in this bill will enable us to fulfill those principles by drawing on the best ideas that have already been put on the table and not only by members of my own party.

That leads me to the last reference to history. In February, Mr. President, I had the traditional honor of reading George Washington's farewell address in the Senate. It is a tradition well worth preserving, because it reminds us of the standard of leadership that was set for us by our very first leader, a standard to which the wise and honest should repair. He warned about faction, about a level of partisanship that can rob the people of the Government's ability to do the people's business. That is what the American people fear is happening in today's Washington.

For too long, the debate on health care has been a symbol of the political gridlock among parties and interest groups that frustrates our people with the Government's inability to take action. The hour has come for health care to be an example of how we can work together to overcome the division, the finger-pointing, and the stalemate, to create the uniquely American structure that will turn the right to affordable health care into a reality for every American.

Mr. President, to recall the chaplain's invocation this morning, we know what is good, what is good for the common good. We know, as Senator DASCHLE said, that we need now to do for health care what long ago we did through Social Security for people's retirement. We know what the good is. Our duty now is to do it.

Mr. DASCHLE. I commend the distinguished Senator from Pennsylvania for his excellent statement, for his cooperative effort, and for the tremendous contribution that he has made to this legislation, and to our efforts that have been demonstrated here this morning. He speaks with an eloquence, with a conviction, and with a real determination that was clear all the way back to the very night of his election.

I do not think that I am exceeding the analysis of any political experts who have given him the credit for spurring the Nation, for spurring the Congress, for igniting the debate about health care across the country. So we welcome his participation, and we are extremely pleased to have the good fortune to have Senator WOFFORD as the prime sponsor of this legislation, along with Senator SIMON of Illinois.

We look forward to working with all of those interested in pursuing this debate. As Senator WOFFORD so eloquently stated, it is our desire to find those areas upon which there is mutual agreement and, indeed, on this side of the aisle, there is a substantial amount of agreement about the need to move ahead in a comprehensive way to address all of the problems we have with health care, as we face our country's future.

So, with that, Mr. President, I yield the remainder of our time, and I ask unanimous consent that the text of the bill and a summary 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. 2513

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Health Security Plan".

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

Sec. 1. Short title; table of contents.
Sec. 2. Statement of principles.
Sec. 3. General definitions.

TITLE I—ELIGIBILITY AND ENROLLMENT

Sec. 101. Eligibility and entitlement.
Sec. 102. Enrollment.
Sec. 103. Portability.

TITLE II—BENEFITS

Subtitle A—Health Care Services

Sec. 201. Covered health care services.
Sec. 202. Limitations and exclusions.
Sec. 203. Patient cost-sharing.

Subtitle B—Long-Term Care Services

Sec. 211. Covered long-term care services.
Sec. 212. Long-Term Care Services Assessment Commission.

Subtitle C—Modification of Services

Sec. 221. Modification of services covered under this Act.

TITLE III—FEDERAL AND STATE ADMINISTRATION

Subtitle A—Federal Administration

Sec. 301. Federal Health Board.
Sec. 302. Federal Health Advisory Council.
Sec. 303. Federal Health Priorities Council.
Sec. 304. Authorization of appropriations.

Subtitle B—State Administration

Sec. 311. State programs.
Sec. 312. Use of fiscal intermediaries.
Sec. 313. State waivers; managed care.
Sec. 314. State regional consortia.
Sec. 315. Technical assistance to States.

TITLE IV—FINANCING

Subtitle A—Health Budgets

Sec. 401. National health budget.
Sec. 402. Payments to States.
Sec. 403. State program budgets.

Subtitle B—Payments to Providers

Sec. 411. Payments to hospitals and other health care and long-term care institutions.
Sec. 412. Payments for practitioners services.
Sec. 413. Special nonphysician practitioner provisions.
Sec. 414. Mandatory assignment.

Subtitle C—Revenues

Sec. 421. Federal sources of revenues.
Sec. 422. Tax treatment of American Health Security Plan and private health and long-term care insurance.
Sec. 423. Federal Health Trust Fund.
Sec. 424. State sources of revenues.

TITLE V—CONGRESSIONAL CONSIDERATION

Sec. 501. Rules governing congressional consideration.

TITLE VI—PRIVATE OPTIONS

Sec. 601. Private supplemental insurance.
Sec. 602. Option to purchase duplicative private insurance.
Sec. 603. Limits on private insurance.

TITLE VII—EXPANSION OF OUTCOMES RESEARCH AND DELIVERY OF SERVICES IN UNDERSERVED AREAS

Sec. 701. Expansion of outcomes research.
Sec. 702. National health service corps.
Sec. 703. Community and migrant health centers.

TITLE VIII—MALPRACTICE REFORM

Sec. 801. Grants to States.
Sec. 802. Criteria for State malpractice reforms.
Sec. 803. Authorization of appropriations

TITLE IX—EFFECTIVE DATES; TERMINATIONS; TRANSITION; RELATION TO ERISA.

Sec. 901. Effective dates.
Sec. 902. Termination of other programs.
Sec. 903. Transition.
Sec. 904. Relation to ERISA.

SEC. 2. STATEMENT OF PRINCIPLES.

The principles of this Act are—

(1) to provide universal access to basic health care services for all Americans regardless of their financial and medical conditions;

(2) to establish the institutional and political capacity to control the Nation's escalating health care costs and eliminate administrative waste;

(3) to ensure the portability of health care coverage to all regions of the country;

(4) to build on the strengths of American federalism, with the Federal Government contributing progressive financing and specifying minimum national standards while State governments supply additional funding and administer the program with the flexibility needed to address the specific concerns of each region;

(5) to maintain the proven advantages of the American health care delivery system, including private practice, the freedom to choose among practitioners, and superiority in biomedical technology;

(6) to encourage the effective use of preventive and primary care;

(7) to enhance the autonomy of practitioners by limiting the intrusiveness of government intervention in the actual delivery of care;

(8) to promote the role of competition among practitioners and to encourage innovation that results in higher quality and more efficient care;

(9) to reduce the incentives providers face to perform medically unnecessary or inappropriate services;

(10) to reinforce the public accountability of the health care system, permitting explicit and open deliberation about the allocation of society's resources to health care; and

(11) to provide that all Americans share in the responsibility of maintaining an efficient health care system.

SEC. 3. GENERAL DEFINITIONS.

(a) IN GENERAL.—For purposes of this Act:

(1) The term "Board" means the Federal Health Board established in section 301.

(2) The term "Advisory Council" means the Federal Health Care Advisory Council established in section 302.

(3) The term "Priorities Council" means the Federal Health Priorities Council established in section 303.

(4) The term "State program" means a State health care program approved under section 311.

(5) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) The term "Trust Fund" means the Federal Health Trust Fund established in section 423.

(b) OTHER DEFINITIONS.—Except as otherwise provided, the definitions contained in section 1861 of the Social Security Act (42 U.S.C. 1395x), as in effect on the day before the date of the enactment of this Act, shall apply in this Act.

TITLE I—ELIGIBILITY AND ENROLLMENT

SEC. 101. ELIGIBILITY AND ENTITLEMENT.

(a) IN GENERAL.—Every individual who is a resident of the United States and is a citizen or national of the United States or lawful resident alien (as defined in subsection (d)) is entitled to health care services and long-term care services covered under this Act in the State in which the individual maintains a primary residence.

(b) TREATMENT OF CERTAIN NON-IMMIGRANTS.—

(1) IN GENERAL.—The Board may make eligible for health care services and long-term care services covered under this Act such classes of aliens admitted to the United States as nonimmigrants as the Board may provide.

(2) CONSIDERATION.—In providing for eligibility under paragraph (1), the Board shall consider reciprocity in health care and long-term care services offered to United States citizens who are nonimmigrants in other foreign states, and such other factors as the Board determines to be appropriate.

(c) TREATMENT OF OTHER INDIVIDUALS.—The Board may make eligible for health care services and long-term care services covered under this Act other individuals not described in subsection (a) or (b), and regulate the nature of the eligibility of such individuals for the purposes of fulfilling the following criteria:

(1) Preserving the public health of communities.

(2) Compensating States for the additional health care financing burdens created by such individuals.

(3) Preventing adverse financial and medical consequences of uncompensated care.

(4) Inhibiting travel and immigration to the United States for the sole purpose of obtaining health care services or long-term care services covered under this Act.

(d) LAWFUL RESIDENT ALIEN DEFINED.—For purposes of this section, the term "lawful resident alien" means an alien lawfully admitted for permanent residence and any other alien lawfully residing permanently in the United States under color of law, including an alien with lawful temporary resident status under section 210, 210A, or 245A of the Immigration and Nationality Act (8 U.S.C. 1160, 1161, or 1255a).

SEC. 102. ENROLLMENT.

(a) IN GENERAL.—Each State program shall provide a mechanism for enrollment of individuals entitled to benefits under this Act and, in conjunction with such enrollment, the issuance of a State health insurance card which may be used for purposes of identification and processing of claims for benefits under this Act.

(b) ENROLLMENT AT BIRTH OR IMMIGRATION.—The mechanism under subsection (a) shall include a process for the automatic enrollment of individuals at the time of birth in the State or at the establishment of permanent residence in the State, including at the time of immigration into the United States, other acquisition of lawful resident status in the United States, or eligibility for other individuals established under section 101(c).

SEC. 103. PORTABILITY.

To ensure continuous access to health care services and long-term care services covered under this Act, each State program—

(1) shall not impose any minimum period of residence in the State, or waiting period, in excess of 3 months before residents of the State are entitled to such services;

(2) shall provide continuation of payment for such services to individuals who have terminated their residence in the State and established their residence in another State, for the duration of any waiting period imposed in the State of new residency for establishing entitlement to such services; and

(3) shall provide for the payment for health care services covered under this Act provided to individuals while temporarily absent from the State based on the following principles:

(A) Payment for such health care services is at the rate that is approved by the State program in the State in which the services are provided, unless the States concerned agree to apportion the cost between them in a different manner.

(B)(i) Except as provided in clause (ii), payment for such health care services provided outside the United States is made on the basis of the amount that would have been paid by the State program for similar services rendered in the State, with due regard, in the case of hospital services, to the size of the hospital, standards of service, and other relevant factors.

(ii) Payment for services described under clause (i) which are elective services may be subject to prior consent of the agency that administers and operates the State program if such elective services are available on a substantially similar basis in the State.

(iii) For the purposes of this subparagraph, the term "elective services" means health care services covered under this Act other than services that are provided in an emergency or in any other circumstance in which medical care is required without delay.

TITLE II—BENEFITS

Subtitle A—Health Care Services

SEC. 201. COVERED HEALTH CARE SERVICES.

(a) IN GENERAL.—Every eligible individual is entitled to have payment made for the health care services covered under this Act by a participating provider if the service is necessary or appropriate for the maintenance of health or for the diagnosis or treatment of, or rehabilitation following, injury, disability, or disease.

(b) SPECIFIC SERVICES.—Subject to limitations described in section 202, health care services covered under this Act are as follows:

(1) Inpatient and outpatient hospital care, including 24-hour per day emergency services.

(2) Diagnostic and screening tests.

(3) Medical and other health services furnished by health care professionals who are authorized to provide such services under State law.

(4) Preventive health care, including care for well-defined causes of illness and injury (such as breast, cervical, and colon cancer), immunizations, prenatal and postnatal care, and well-baby and well-child care (including physical examinations and vision, dental, hearing, and developmental examinations).

(5) Prescription drugs, biologicals, and devices.

(6) Substance abuse treatment services, including comprehensive residential treatment services for pregnant women and women with children seeking treatment for substance abuse.

(7) Outpatient mental health services to provide an active preventive, diagnostic, therapeutic, or rehabilitative service with respect to emotional or mental disorders.

(8) Hospice care for patients certified to be terminally ill, provided under a State approved program.

(9) Habilitation and rehabilitation services, including physical, speech, and occupational therapies.

(10) Home medical equipment and prosthetic devices prescribed by a licensed practitioner.

(11) Experimental treatment as deemed necessary by the review of the Board and the State Advisory Boards.

SEC. 202. LIMITATIONS AND EXCLUSIONS.

(a) NO LIMITS IN GENERAL.—Except as provided in this section, section 203, and section 221, a State program may not limit the amount, duration, or scope of health care services covered under this Act.

(b) SPECIFIC EXCLUSIONS.—Health care services excluded from coverage under this Act include the following:

(1) Cosmetic surgery, except medically necessary reconstruction.

(2) Certain amenities in inpatient facilities, such as private rooms and other amenities determined by the Board, unless medically necessary.

SEC. 203. PATIENT COST-SHARING.

(a) IN GENERAL.—Except as provided in this section, a State program may not impose cost-sharing for services under this Act.

(b) ESTABLISHMENT OF COST-SHARING SCHEDULE.—

(1) IN GENERAL.—Copayments and out-of-pocket limits shall be established by the Board. The Board shall base its determinations on the following principles:

(A) Assurance of administrative simplicity and efficiency.

(B) Maintenance of the fiscal integrity of the public health insurance program.

(C) Deterrence of unnecessary use of services.

(D) Encouragement of healthy behaviors.

(E) Encouragement of the use of preventive services.

(F) Maximization of economic fairness.

(G) Minimization of financial barriers to appropriate medical care.

(2) STUDY OF MODIFICATIONS.—

(A) IN GENERAL.—The Priorities Council shall study whether the out-of-pocket limits should be modified to take into account family size, and whether cost sharing requirements should be different for individuals that engage in certain practices deemed to increase the likelihood such individuals will utilize more health care resources than individuals who do not engage in such practices.

(B) SPECIFIC RECOMMENDATIONS.—The Priorities Council within 2 years of the date described in section 901(b)(1) shall issue recommendations regarding the study described in subparagraph (A). The recommendations must balance the following goals:

(i) Preserve the fiscal integrity of the public health insurance program.

(ii) Minimize the shifting between individuals and families of the burden of financing the public program.

(iii) Encourage behaviors by governments, intermediaries, providers, and individuals that lead to reduced costs to the health care system.

(3) REGULATIONS BASED ON RECOMMENDATIONS.—

(A) IN GENERAL.—The Board is authorized to promulgate regulations, as it deems appropriate, for implementing the recommendations of the Priorities Council.

(B) MODIFICATIONS.—The Board is also authorized to promulgate regulations to make periodic adjustments for inflation to income categories, copayments, and deductibles.

(C) EFFECT OF REGULATIONS.—The regulations incorporating these modifications to the cost sharing and out-of-pocket limits described in this section shall have the force of law, unless within 60 days of the promulgation of the regulations, the Congress enacts a disapproval resolution under the procedures described in section 501.

Subtitle B—Long-Term Care Services

SEC. 211. COVERED LONG-TERM CARE SERVICES.

(a) IN GENERAL.—The Board, by regulation, shall set standards for eligibility, long-term care services covered, cost-sharing, income protection, and case management, subject to the criteria described in the following subsections.

(b) ELIGIBILITY.—

(1) IN GENERAL.—The Board shall determine the standards for eligibility for institutional and for home and community-based long-term care services based on an individual's ability to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs), and comparable cognitive or behavioral impairments.

(2) DETERMINATION.—Eligibility for long-term care services shall be based on a determination by a case manager of the individual's ability to perform the minimum level of ADLs and IADLs, according to the standard set by the Board.

(3) STANDARD.—The Board shall, pursuant to recommendations by the Advisory Council and the Long-Term Care Services Assessment Commission, periodically make recommendations about the efficacy of using deficits in ADLs and IADLs, or measures of comparable cognitive or behavioral impairment, or both, to determine eligibility for long-term care services.

(c) SERVICES COVERED.—

(1) IN GENERAL.—The Board shall determine the long-term care services to be covered under this Act to meet the long-term care needs of the eligible population.

(2) MINIMUM SERVICES.—At a minimum, long-term care services to be covered under this Act, subject to standards set by the Board, shall include:

(A) Home and community-based services, such as nursing care and rehabilitative and restorative care.

(B) Nursing home care.

(C) Hospice care.

(D) Home medical equipment.

(E) Services for individuals with developmental disabilities and mental illness.

(d) COST SHARING.—The Board shall establish an income-related cost-sharing schedule for individuals eligible for long-term care services covered under this Act, taking into account such factors as what out-of-nursing home expenses would have been.

(e) INCOME PROTECTION.—

(1) IN GENERAL.—The Board shall reduce the cost sharing to ensure that the income and assets of the individual using long-term care services covered under this Act are sufficient to enable such individual to retain a personal needs allowance sufficient—

(A) to cover all items needed in addition to those provided by the long-term care facility,

(B) to maintain such individual's primary residence, and

(C) to maintain such individual's independence once the individual no longer needs long-term care services.

(2) SPOUSAL PROTECTION, ETC.—The Board shall reduce the cost sharing to ensure that the income of the spouse or dependent of the individual using long-term care services covered under this Act is not reduced below levels determined appropriate by the Board, but in no case less than the spousal protection levels under title XIX of the Social Security Act, as in effect on the day before the date of the enactment of this Act.

(f) CASE MANAGEMENT.—

(1) IN GENERAL.—The Board shall set standards for case management of long-term care services covered under this Act.

(2) CASE MANAGER.—

(A) IN GENERAL.—Under the case management system, services shall be made available to individuals through a case manager who will be responsible for matching services to each individual's needs, and coordinating the delivery of services.

(B) SPECIFIC RESPONSIBILITIES.— The specific responsibilities of the case manager include:

(i) The assessment and periodic reassessment of an individual's need for services, and the availability and efficacy of informal services.

(ii) the development of plan of care for the individual.

(iii) The authorization and coordination of services designed to meet an individual's unmet needs.

(g) EFFECT OF REGULATIONS.—The regulations incorporating the standards described in subsection (a) shall have the force of law, unless within 60 days of the promulgation of the regulations, the Congress enacts a disapproval resolution under the procedures described in section 501.

SEC. 212. LONG-TERM CARE SERVICES ASSESSMENT COMMISSION.

(a) ESTABLISHMENT.—The Director of the Congressional Office of Technology Assessment (hereafter in this section referred to as the "Director") shall provide for the appointment of a Long-Term Care Services Assessment Commission (hereafter in this section referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall consist of 10 individuals appointed for a seven-year term, beginning on October 1, 1993. The membership of the Commission shall include long-term care service providers, other health and social service professionals, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and representatives of consumers, the elderly, and the disabled. The Director shall fill any vacancy in the membership of the Commission in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) COMPENSATION.—All members of the Commission shall be reimbursed by the Board for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission in accordance with subchapter I of chapter 57 of title 5, United States Code.

(d) ORGANIZATION.—The Commission shall cease to exist at the end of the 7-year term described in subsection (b).

(e) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

(f) DUTIES.—

(1) IN GENERAL.—The Commission shall make recommendations to the Board not later than January 31 of 1994 (and of each subsequent year) regarding—

(A) the adequacy and appropriateness of the long-term care services covered under this Act,

(B) the criteria for eligibility for long-term care services,

(C) the effect of the cost sharing requirements for long-term care services,

(D) the financial protections provided individuals in the use of such services and the ability of the patient and any spouse or dependent of the patient in the community to remain financially independent once the patient no longer needs long-term care services,

(E) the effect of the long-term care services covered under this Act on the availability and use of informal long-term care services and private long-term care insurance, and

(F) the overall functioning of the provision of long-term care services covered under this Act, once fully implemented.

(2) REVIEW.—The Commission shall review and analyze any long-term care services regulations or proposed regulations of the Board

and report to the Congress its assessment of the appropriateness of the regulations in meeting the statutory criteria established under this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary for the establishment and operation of the Commission to carry out the purposes of this Act.

Subtitle C—Modification of Services

SEC. 221. MODIFICATION OF SERVICES COVERED UNDER THIS ACT.

(a) RECOMMENDATIONS BY PRIORITIES COUNCIL.—Not later than January 31 of 1997 (and of each subsequent year), the Priorities Council shall issue a report to the Board describing any changes, additions, deletions, or clarifications the Priority Council recommends for the health care services and long-term care services covered under this Act.

(b) BOARD REGULATIONS.—

(1) IN GENERAL.—The Board is authorized to promulgate regulations, as the Board deems appropriate, for implementing the recommendations of the Priorities Council. Such regulations are to be promulgated within 1 year of the submission of the Priorities Council's report.

(2) EFFECT.—The regulations incorporating modifications in the health care services and long-term care services covered under this Act shall have the force of law, unless within 60 days of the promulgation of the regulations, the Congress enacts a disapproval resolution under the procedures described in section 501.

TITLE III—FEDERAL AND STATE ADMINISTRATION

Subtitle A—Federal Administration

SEC. 301. FEDERAL HEALTH BOARD.

(a) IN GENERAL.—There is hereby established a Federal Health Board.

(b) APPOINTMENT AND TERMS OF MEMBERS.—

(1) APPOINTMENT.—The Board shall be composed of 9 individuals appointed by the President, with the advice and consent of the Senate, not later than October 1, 1993, and shall be chosen on the basis of backgrounds in health policy, health economics, the healing professions, and the administration of health care institutions. At least 1 member of the Board shall represent consumer interests, and due regard must be given to geographic, urban, and rural representation. No more than 5 members may be affiliated with a single political party.

(2) TERMS OF MEMBERS.—The individuals appointed shall serve for a term of 9 years (or until a successor is appointed), except that the terms of individuals initially appointed shall be (as specified by the President) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(3) REMOVAL FOR CAUSE ONLY.—Upon confirmation, members of the Board may not be removed except for cause upon notice and hearing.

(c) VACANCIES.—

(1) IN GENERAL.—The President shall fill any vacancy in the membership of the Board in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(2) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

(3) REAPPOINTMENT.—The President may reappoint an appointed member of the Board for a second term in the same manner as the original appointment.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The Board shall select a Chairperson and a Vice Chairperson from among the members of the Board.

(e) COMPENSATION.—Members of the Board shall be compensated at a level comparable to level II of the Executive Schedule, in accordance with section 5313 of title 5, United States Code.

(f) STAFF.—The Board shall employ such staff as the Board may determine necessary.

(g) APPLICABILITY OF CIVIL SERVICE PROVISIONS.—The staff of the Board may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and be compensated without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that no individual may receive pay less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule or more than the rate of basic pay payable for level IV of the Executive Schedule.

(h) DUTIES.—

(1) IN GENERAL.—The Board is responsible for the overall administration of this Act, including such duties specifically designated by this Act.

(2) ADDITIONAL DUTIES.—The duties of the Board also include—

(A) facilitating the exchange of information among States,

(B) establishing, evaluating, and updating national minimum quality standards,

(C) establishing uniform reporting requirements,

(D) reviewing and approving interstate consortia, and

(E) assisting States in developing systems to minimize fragmented care.

(i) REPORTS.—

(1) INITIAL REPORT.—Not later than January 1, 1995, the Board shall report to the Congress regarding the implementation of the program established under this Act, including any recommendations for further implementing legislation.

(2) ANNUAL REPORTS.—Beginning January 1, 1996, the Board shall annually report to Congress on the status of expenditures under this Act and the long-range plans and goals of the Board for the organization and delivery of health care services and long-term care services under this Act.

SEC. 302. FEDERAL HEALTH ADVISORY COUNCIL.

(a) APPOINTMENT.—Not later than January 1, 1994, the Board shall provide for appointment of a Federal Health Advisory Council to advise the Board on its activities.

(b) MEMBERSHIP.—Such Advisory Council shall consist of 15 members who are representatives of consumers, providers, unions, health care experts, senior citizen groups, public health officials, rural health experts, and other individuals with an interest in the health care system. Such members shall serve for terms of 3 years, except that, in the initial appointment, 5 members shall be each appointed for terms of 1-year, 2-years, and 3-years.

(c) VACANCIES.—

(1) IN GENERAL.—The Board shall fill any vacancy in the membership of the Advisory Council in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Advisory Council.

(2) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

(3) REAPPOINTMENT.—The Board may reappoint an appointed member of the Advisory Council for a second term in the same manner as the original appointment.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The Advisory Council shall select a Chairperson and a Vice Chairperson from among the members of the Advisory Council.

(e) COMPENSATION.—All members of the Advisory Council shall be reimbursed by the Board for travel and per diem in lieu of subsistence expenses during the performance of duties of the Advisory Council in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to the Advisory Council.

(g) DUTIES.—The Advisory Council shall conduct studies and make recommendations to the Board on the overall functioning of the program established under this Act and consumer and provider satisfaction with such program.

SEC. 303. FEDERAL HEALTH PRIORITIES COUNCIL.

(a) IN GENERAL.—There is hereby established a Federal Health Priorities Council.

(b) APPOINTMENT AND TERMS OF MEMBERS.—

(1) APPOINTMENT.—The Priorities Council shall be composed of 15 individuals appointed by the President, with the advice and consent of the Senate, not later than October 1, 1993. Such individuals shall be representatives from the fields of medicine, dentistry, mental health care, nursing, social services, ethics, economics, business, and consumer groups.

(2) TERMS OF MEMBERS.—The individuals appointed shall serve for a term of 5 years, except that the terms of individuals initially appointed shall be (as specified by the President) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(c) VACANCIES.—

(1) IN GENERAL.—The President shall fill any vacancy in the membership of the Priorities Council in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Priorities Council.

(2) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

(3) REAPPOINTMENT.—The President may reappoint an appointed member of the Priorities Council for a second term in the same manner as the original appointment.

(d) PRESIDENT AND VICE PRESIDENT.—The Priorities Council shall select a President and a Vice President from among the members of the Priorities Council.

(e) COMPENSATION.—Members of the Priorities Council shall be compensated at a level comparable to level II of the Executive Schedule, in accordance with section 5313 of title 5, United States Code.

(f) STAFF.—The Priorities Council shall employ such staff as the Priorities Council may determine necessary.

(g) APPLICABILITY OF CIVIL SERVICE PROVISIONS.—The staff of the Priorities Council may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and be compensated without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that no individual may receive pay less than

120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule or more than the rate of basic pay payable for level IV of the Executive Schedule.

(h) COMMITTEES.—The Priorities Council may establish such committees of its members and other medical, economic, or health services advisers as it determines to be necessary to assist the Priorities Council in the performance of its duties.

(i) FUNCTIONS.—In order to build a consensus on the values to be used to guide health resource decisions, the Priorities Council shall have the following functions:

(1) Conduct public hearings and solicit testimony and information from advocates for children, senior citizens, the disabled, consumers of mental health services, low-income people, providers of health care, business leaders, and others.

(2) Building on outcomes research and the development of practice guidelines, conduct studies and make recommendations for how health care dollars should be allocated in the context of a publicly funded national health insurance plan.

(j) REPORTS.—The Priorities Council shall report to the Board a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the Nation's population. The recommendation shall be accompanied by a report of an independent actuary retained for the Board to determine rates necessary to cover the costs of the included services in order to establish an appropriate annual global budget. The recommendation is to be used in evaluating and modifying the health care services and the long-term care services covered under this Act. The reports from the Priorities Council to the Board are to be submitted by January 31 of 1995 (and of each subsequent year), to be acted on by the Board by the following January 31.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary for the establishment and operation of the Board, Advisory Council, and Priorities Council to carry out the purposes of this Act.

Subtitle B—State Administration

SEC. 311. STATE PROGRAMS.

(a) SUBMISSION OF PROGRAMS.—

(1) IN GENERAL.—Not later than October 1, 1995, each State shall submit to the Board the State program in the State.

(2) REGIONAL PROGRAMS.—Any State may join with neighboring States to submit to the Board a regional program in lieu of a State program, as described in section 314.

(b) REVIEW AND APPROVAL OF PROGRAMS.—The Board shall review programs submitted under subsection (a) and determine whether such programs meet the requirements for approval, not later than October 1, 1996. The Board shall not approve such a program unless it finds that the program provides, consistent with the provisions of this Act, for—

(1) adequate financing of health care services and long-term care services covered under this Act through a designated fund, including the annual submission of the State program budget to the Board,

(2) adequate administration, including the designation of a single nonprofit State agency responsible for administration of the program, and sufficient provisions to ensure against fraud and abuse,

(3) the establishment of—

(A) an institution reimbursement negotiation board to negotiate global operating, capital, and health training budgets with hospitals and other health care and long-term care institutions,

(B) a practitioner reimbursement negotiation board (with membership including State government representatives, consumers, general practice physicians, specialists, and nonphysician practitioners) to negotiate reimbursement rates for participating providers, and

(C) at the State's option, a State advisory board (with broad representation of health policy experts, institutional providers, practitioners, and consumers) to generally oversee and review the performance of the State program,

(4) assurances that individuals have the freedom to choose practitioners and other health care providers for services covered under this Act, and

(5) an organized grievance procedure available to consumers through which complaints about the organization and administration of the State program may be filed, heard, and resolved.

(c) OPERATIONAL STATUS.—A State program in a State shall not be considered operational unless it is approved and remains approved under subsection (b).

(d) FAILURE TO COMPLY WITH THIS ACT.—Whenever the Board, after reasonable notice and opportunity for hearing to the designated State agency finds that in the administration of the State program there is a failure to comply with any provision of this Act, the Board may—

(1) withhold further payments to the State under section 402 and may limit such withholding to specific portions of such program affected by the failure, or

(2) place the State program, or specific portions of such program, in receivership under the jurisdiction of the Board,

until such failure has been corrected.

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—If any State is dissatisfied with the Board's action in denying approval of such State's program or finding a failure under subsection (d) with respect to such program, such State may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Board. The Board thereupon shall file in the court the record of the proceedings upon which the Board's action was based, as provided in section 2112 of title 28, United States Code.

(2) FINDINGS OF FACT.—The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify the Board's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) JURISDICTION OF COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Board or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

SEC. 312. USE OF FISCAL INTERMEDIARIES.

(a) IN GENERAL.—Each State program may contract with fiscal intermediaries in a process of competitive bidding.

(b) ROLE OF FISCAL INTERMEDIARY.—

(1) IN GENERAL.—Subject to paragraph (2) and under continuous State oversight, the fiscal intermediary shall process claims and reimbursements, distribute the allocation of funds as specified in agreements on global operating budgets, and assume general responsibility for the administration of the State program.

(2) LIMITATION.—The fiscal intermediary may not participate in, nor administer, the negotiating processes used to establish global operating budgets or practitioner reimbursement rates.

(c) TYPE OF ORGANIZATION.—The fiscal intermediary may be any type of entity designated by the State, including nonprofit associations and private companies, as long as the State or regional program provides for public accountability. Such accountability may include review of the operations of the fiscal intermediary by the State advisory board.

SEC. 313. STATE WAIVERS; MANAGED CARE.

(a) STATE WAIVERS.—A State program shall be allowed to obtain waivers from the Board—

(1) to implement alternative and innovative—

(A) methods of reimbursing health care providers,

(B) patient cost sharing arrangements, and

(C) administrative structures, and

(2) to provide the services covered under this Act through the use of health plans paid through a capitation method in order to allow the freedom of choice of all eligible individuals in the selection of a health plan.

In approving any waiver the Board shall assure itself that the State program otherwise complies with the requirements of this Act that are not inconsistent with the granting of such waiver.

(b) MANAGED CARE OPTION.—No provision of this Act shall be construed to prohibit or discourage any State from developing, or contracting with, managed care networks for the purpose of delivering services covered under this Act of a higher quality and in a more cost-effective manner, as long as such networks otherwise meet the requirements of this Act.

(c) ORGANIZED APPROACHES TO DELIVERY OF SERVICES.—The Board shall sponsor efforts to encourage States and providers of services to develop and expand organized approaches to the delivery of health care services covered under this Act, including health maintenance organizations, hospital-based and community-oriented team health services, and neighborhood-hospital-home health care plans.

SEC. 314. STATE REGIONAL CONSORTIA.

(a) IN GENERAL.—Any group of States may enter into an agreement to establish a regional consortium for the purposes of implementing a program to be approved by the Board under section 311. Such regional consortium shall have jurisdiction over all States that are parties to such agreement and that shall be subject to the provisions of section 311 as if such consortium were established by a single State.

(b) CONSORTIUM AGREEMENT.—Any agreement to establish a State regional consortium shall, in addition to providing for the requirements specified in section 311(b), provide for—

(1) a mechanism to resolve any disputes between or among the States that are parties to the agreement, and

(2) the collection of data and information concerning the operations of the consortium and the submission of such data and information to the Board on an annual basis.

(c) CONGRESSIONAL REVIEW.—Any consortium agreement described in this section

which has been approved by the Board, shall be submitted to the Congress and shall be considered in effect, unless within 60 days of the submission of the agreement, the Congress enacts a disapproval resolution under the procedures described in section 501.

SEC. 315. TECHNICAL ASSISTANCE TO STATES.

(a) GRANTS.—

(1) IN GENERAL.—Not later than October 1, 1994, the Board shall award a grant to each State or group of States to assist in paying the costs associated with the establishment and initial operation of the State plan or the State regional consortium agreement.

(2) AMOUNTS.—Not less than $500,000 shall be provided to each State or group of States under a grant awarded under paragraph (1), and any State or group of States shall remit to the Trust Fund any unspent amount of such grant at the end of the 2-year period beginning with the date of the awarding of such grant.

(3) PLANNING FUNCTIONS.—Amounts provided under grants awarded under paragraph (1) shall be utilized for planning functions only.

(4) STUDY.—Not later than October 1, 1997, the Board shall prepare and submit to the appropriate committees of Congress, a report that shall contain the results of a study conducted by the Board concerning the use of the grants awarded under paragraph (1), and whether such use was effective preparing State plans and State regional consortia agreements and simplifying administrative procedures.

(b) TECHNICAL ASSISTANCE.—The Board shall provide technical assistance to States in developing State plans and State regional consortia agreements.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE IV—FINANCING

Subtitle A—Health Budgets

SEC. 401. NATIONAL HEALTH BUDGET.

(a) IN GENERAL.—

(1) ANNUAL BUDGETS.—Except as provided in paragraph (2), the Board shall establish an annual fiscal year budget of expenditures that estimates the total expenditures to be made in such fiscal year by the Federal Government and States for health care services and long-term care services covered under this Act, including the administrative costs associated with such services.

(2) BIENNIAL BUDGETS.—The Board may establish biennial fiscal year budgets in lieu of annual budgets.

(b) NATIONAL AVERAGE PER CAPITA COSTS.—

(1) IN GENERAL.—At least 6 months before the beginning of the first fiscal year of the program under this Act, the Board shall compute the national average per capita cost for each of the services described in subsection (a) using data the Board deems to be appropriate.

(2) ADJUSTMENTS FOR RISK GROUPS.—

(A) IN GENERAL.—The Board shall develop an adjustment factor to the national average per capita costs computed under paragraph (1) for each risk group (as designated under subparagraph (B)) to reflect the national average per capita costs for that risk group.

(B) RISK GROUPS.—The Board shall designate a series of risk groups, determined by age, sex, and other factors that represent distinct patterns of health care services and long-term care services utilization and costs.

(3) STATE ADJUSTMENTS TO NATIONAL AVERAGE PER CAPITA COSTS.—The Board shall develop for each State a factor to adjust the national average per capita costs for each risk group to reflect—

(A) average labor and nonlabor costs that are necessary to produce the services described in subsection (a),

(B) any special social, environmental, epidemiological, or other condition affecting health status or the need for health care services and long-term care services,

(C) the geographic distribution of the State's population, particularly the proportion of the population residing in rural or medically underserved areas,

(D) the quality and availability of the State's existing health care resources needed for delivering health care services and long-term care services, and

(E) any other economic, geographic, and sociologic factors.

(c) STATE TOTAL EXPENDITURES.—The Board shall compute for each State total projected expenditures in the next fiscal year for each of the services described in subsection (a), by multiplying—

(1) the national average per capita costs of each risk group designated in subsection (b)(2)(B), by

(2) the product of the State adjustment factors described in subsection (b)(3) and the number of persons in the State estimated by the Bureau of the Census to be resident members of each risk group at the beginning of the next fiscal year.

(d) FEDERAL CONTRIBUTIONS.—

(1) IN GENERAL.—The Board shall determine the appropriate Federal contribution for each State, constituting the Federal percentage share of each State's total projected expenditures for the services described in section (a). The Federal share shall be determined by subtracting the State share from 100 percent of the total projected expenditures for such State (as described under subsection (c)), but in no event shall such Federal contribution be less than 75 percent nor more than 85 percent of such expenditures. The Federal share for all States shall equal 80 percent of the aggregate of such expenditures for all States.

(2) ADJUSTMENTS IN STATE SHARE.—In determining each State share, the Board shall develop a formula that considers a State's—

(A) per capita income,

(B) total taxable resources,

(C) economic performance relative to the national economy as it affects the availability of taxable resources, and

(D) other relevant economic and demographic indicators.

(e) SUBSEQUENT CALCULATIONS.—For each subsequent fiscal year, the Board shall recompute under subsections (a), (b), (c), and (d) at least 6 months before the beginning of such fiscal year. In making such a recomputation, the Board shall take into account—

(1) changes in medical technology, outcomes research evidence concerning the efficacy and safety of health care services and long-term care services, needs for health personnel, professional practice guidelines, and changing health care priorities, after reviewing recommendations of the Advisory Council and the Priorities Council, and

(2) changes in the services described in subsection (a) under regulations promulgated by the Board and accepted by the Congress under section 204.

(f) EFFECT OF BOARD ACTIONS.—Any determination made by the Board under this section with respect to any fiscal year shall be submitted to the Congress at least 6 months before the beginning of such fiscal year, and shall have the force of law, unless within 60 days of the submission of such determination, the Congress enacts a disapproval resolution under the procedures described in section 501.

SEC. 402. PAYMENTS TO STATES.

(a) IN GENERAL.—For each fiscal year, each State with a State program approved under section 311, is entitled to receive (subject to section 311(d)), from amounts in the Trust Fund, a Federal contribution in an amount equal to the product of—

(1) the Federal share for such State (computed under section 401(d)), and

(2) such State's total projected expenditures (computed under section 401(c)).

(b) USE OF DEDICATED FUNDS.—

(1) IN GENERAL.—All revenues, including the Federal contribution and State revenues provided to finance a State program under this Act shall be allocated to a dedicated fund specified by the State. Payments for health care services and long-term care services covered under this Act shall be made from such fund.

(2) SPECIAL ACCOUNTS.—Each State shall establish within its designated fund special accounts, the amount of revenues deposited in each to be determined by the State. The various special accounts shall include the following:

(A) An Institutional Global Operating Budget Account shall be used to fund total expenditures for the operating costs of hospitals and other health care and long-term care institutions, allocated according to the method specified in section 411(b).

(B) An Institutional Capital Account shall be used to fund total expenditures for capital-related items in hospitals and other health care and long-term care institutions, allocated according to the method specified in section 411(c).

(C) A Health Training Account shall be used to fund direct and indirect graduate medical education in hospitals and other health care and long-term care institutions to cover excess operating and capital costs associated with teaching and related research activities, allocated according to the method specified in section 411(d).

(D) A Practitioner Reimbursement Account shall be used to fund the reimbursement of services provided by physicians and other health care practitioners, allocated according to the method specified in section 412.

SEC. 403. STATE PROGRAM BUDGETS.

(a) IN GENERAL.—Each State program shall establish an annual fiscal year State program budget which provides for—

(1) the total expenditures to be made under the State program in such fiscal year for health care services and long-term care services covered under this Act (including administrative and associated costs), and

(2) the revenues to meet such expenditures.

(b) COORDINATION.—Each State program budget shall be coordinated, in a manner specified by the Board, with the national health budget established under section 401(a).

(c) STATE SHARE.—

(1) IN GENERAL.—Each State program shall cover the State share of program costs through the use of tax revenues and other financing methods allowed under section 424.

(2) ADDITIONS TO STATE SHARE.—Each State shall raise the revenues necessary to cover at least the State share specified in the national health budget established by the Board (computed under section 401(d)). Each State is permitted to raise additional revenues and to increase such State's health pro-

gram expenditures beyond the amount specified in the State share specified for the national health budget—

(A) to cover the costs of benefits for health care services or long-term care services the State program authorizes in addition to the services covered in this Act or as amended by the Board and the Congress,

(B) to provide for increased global operating, capital, or health training budgets for hospitals and other health care and long-term care institutions,

(C) to provide for any unexpected increase in health care costs identified by the State program, and

(D) for other purposes that may be identified by the Board.

(d) BARRIERS TO ACCESS PROHIBITED.—No State, either by intention or as an unstated consequence of budget allocations, may restrict or cause to be restricted timely access to the medically necessary and appropriate health care services and long-term care services covered under this Act, or permit queues for services to form that have the potential of being life threatening.

(e) ANNUAL PUBLICATION.—The State program shall provide for the publication annually of the most recent State program budget established under this section.

Subtitle B—Payments to Providers

SEC. 411. PAYMENTS TO HOSPITALS AND OTHER HEALTH CARE AND LONG-TERM CARE INSTITUTIONS.

(a) IN GENERAL.—Each State program shall be responsible for—

(1) allocating from the State program budget the aggregate amount of money to be directed to hospitals and other health care and long-term care institutions for the global operating, capital, and health training budgets of such institutions, and

(2) devising mechanisms for the allocation from such budget of capital expenditures in non-institutional settings.

(b) GLOBAL BUDGETS FOR OPERATING EXPENSES FOR HOSPITALS AND OTHER HEALTH CARE AND LONG-TERM CARE INSTITUTIONS.—The following principles shall guide a State institution reimbursement negotiation board in negotiating institutional global operating budgets:

(1) Each State program budget shall include a separate account for global operating expenses to provide for total State expenditures for the operating expenses of hospitals and other health care and long-term care institutions.

(2) Payment shall be based on an annual prospective global budget for operating expenses submitted by an institution, in a manner specified by the State program, to the agency designated by the State program.

(3) The budgets shall take into account amounts that are reasonable and necessary in the efficient provision of necessary hospital and other institutional services covered under this Act.

(4) The operating budgets shall not include capital-related and health training expenses.

(5) Adjustments may later be made in the budget to reflect significant changes in the volume or types of services assumed in the approval of the budget.

(6) A State should encourage innovation by permitting any institution to include in its budget for the immediate year any programs designed to increase efficiency in later years, if those improvements can be demonstrated to the satisfaction of the designated State agency.

(c) CAPITAL BUDGETS FOR HOSPITALS AND OTHER HEALTH CARE AND LONG-TERM CARE INSTITUTIONS.—The following principles shall guide a State institution reimbursement negotiation board in negotiating institutional capital budgets:

(1) Each State program budget shall include a separate account for capital expenses to provide for total State expenditures for the capital-related items in hospitals and other health care and long-term care institutions.

(2) Each State program budget shall specify the general manner in which such expenditures for capital-related items are to be distributed among different types of institutions and the different areas of the State to take into account the need for capital expenditures throughout the State.

(3) Capital expenditures are those authorized by the State for the provision of insured health services, regardless of whether the source of funds for the capital expenditure is derived from accumulated depreciation charges, operating surpluses or retained earnings, expenditure of accumulated fund balances, issuance of bonds, notes, debentures or other evidence of indebtedness, borrowed funds, or any other source including equity capitalization.

(4) Unless otherwise provided in this Act regarding underserved areas, or waived by the designated State agency if necessary to provide equitable resource allocation and access to quality care, hospitals and other health care and long-term care institutions shall furnish a 15 percent match for funds allocated from the Institutional Capital Account of the budget.

(d) HEALTH TRAINING FOR HOSPITALS AND OTHER HEALTH CARE AND LONG-TERM CARE INSTITUTIONS.—The following principles shall guide a State institution reimbursement negotiation board in negotiating institutional health training budgets:

(1) Each State program budget shall include a separate account for direct and indirect graduate medical education-related expenses in hospitals and other health care and long-term care institutions.

(2) Each state program budget shall specify the general manner in which such expenditures for direct and indirect graduate medical education are to be distributed among different types of institutions and the different areas of the State.

(3) The distribution of funds to hospitals and other health care and long-term care institutions from the Health Training Account must conform to the following principles:

(A) At least 50 percent of the funding from the Health Training Account is to be directed to primary care training programs.

(B) For each 5-year period beginning after the date which is 5 years after the date of the enactment of this Act, the Advisory Board will evaluate the required minimum percentage of funds that States must direct to primary care and recommend whether the percentage should be changed to ensure consistency with the goal of encouraging primary care residency training programs.

(C) The State is to develop a methodology for funding nonhospital-based residency programs and to establish opportunities for residencies in community-based health care facilities.

(D) The distribution of funds from the Health Training Account must take into account the potentially higher costs of placing medical students in rural residency programs.

(E) The distribution of funds from the Health Training Account must accommodate the education and training needs of nonphysician practitioners.

SEC. 412. PAYMENTS FOR PRACTITIONERS SERVICES.

The State practitioner reimbursement negotiation board shall negotiate with the State organizations representing each of the practitioner disciplines in order to derive a relative value scale fee schedule that fulfills each of the following principles:

(1) Appropriate levels of payment are provided primary care services, including general, family, and preventive procedures.

(2) The same compensation is given for the same procedures even when performed by different types of practitioners licensed to offer those procedures.

(3) Reimbursement rates for different procedures performed by practitioners in different disciplines reflect the relative value of those procedures.

(4) Urban and rural practitioners receive the same reimbursement rates for the same services, unless the State determines that a differential rate is required to increase the access to health care practitioners in underserved areas.

(5) A process is established that keeps overall reimbursements in line with the amount of funding budgeted for practitioner reimbursements.

SEC. 413. SPECIAL NONPHYSICIAN PRACTITIONER PROVISIONS.

The following principles shall guide the State practitioner reimbursement negotiation board in negotiating reimbursement rates for nonphysician practitioners:

(1) When the same services covered under this Act are provided by practitioners licensed by the State, reimbursement rates for those same services shall be the same regardless of the type of practitioner providing such services.

(2) For procedures covered under this Act, services provided by all practitioners licensed in the State for those services are to be included in the reimbursement fee schedule.

SEC. 414. MANDATORY ASSIGNMENT.

(a) IN GENERAL.—Except with respect to patient cost-sharing provisions under section 203 of this Act, no individual shall be liable for payment of any amount for health care services or long-term care services covered under this Act, and payment by a State program shall constitute payment in full for such services.

(b) ENFORCEMENT.—The State program shall apply appropriate sanctions against the entity if such entity knowingly and willfully charges for an item or service or accepts payment in violation of subsection (a).

Subtitle C—Revenues

SEC. 421. FEDERAL SOURCES OF REVENUES.

(a) AMERICAN HEALTH SECURITY PLAN PREMIUMS.—The Board, in consultation with the Secretary of the Treasury, shall develop a mechanism for determining and collecting a premium from individuals and employers for health care services and long-term care services covered under this Act, to be known as the American Health Security Plan premium.

(b) DETERMINATION OF PREMIUM AMOUNT.—The Board shall determine the American Health Security Plan premium for each taxable year beginning after December 31, 1995, by estimating the total amount necessary to equal the excess of—

(1) expenditures described in section 423(c) for the fiscal year beginning in such taxable year, over

(2) receipts described in section 423(b) (other than paragraph (1)) for such fiscal year.

(c) COLLECTION OF PREMIUM.—

(1) INDIVIDUALS.—The Board shall collect the American Health Security Plan premium from individuals using a mechanism with the following characteristics:

(A) Income-based (including earned and unearned income).

(B) Progressive.

(C) Payable in increments during the course of the year.

(D) Payable by individuals or by employers on behalf of employees (at the option of the employer), as described in paragraph (2)(C).

(E) Subject to the provisions of subtitle F of the Internal Revenue Code of 1986.

(2) EMPLOYERS.—The Board shall collect the American Health Security Plan premium from employers using a mechanism with the following characteristics:

(A) Aggregate employer contributions would equal an amount necessary to prevent an increase in the percentage of 1992 aggregate household health care expenditures.

(B) Contribution rate based on each employer's ability to pay as indicated by factors such as the size of the employer's workforce and profitability.

(C) Any employer would have the option of paying all or part of the American Health Security Plan premium otherwise payable by such employer's employees.

(D) Subject to the provisions of subtitle F of the Internal Revenue Code of 1986.

(d) EFFECT OF BOARD ACTIONS.—Any premium determination made by the Board under this subsection with respect to any taxable year shall be submitted to the Congress at least 6 months before the beginning of such taxable year, and shall have the force of law, unless within 60 days of the submission of such determination, the Congress enacts a disapproval resolution under the procedures described in section 501.

(e) EFFECTIVE DATE.—The provisions of this section shall apply with respect to remuneration paid after December 31, 1995, and with respect to earnings from self-employment attributable to taxable years beginning after such date.

SEC. 422. TAX TREATMENT OF AMERICAN HEALTH SECURITY PLAN AND PRIVATE HEALTH AND LONG-TERM CARE INSURANCE.

(a) TAX EXCLUSIONS FOR AMOUNTS RECEIVED FROM, AND EMPLOYER CONTRIBUTIONS TO, THE PLAN.—

(1) AMOUNTS RECEIVED.—Subsection (e) of section 105 of the Internal Revenue Code of 1986 (relating to amounts received under accident and health plans) is amended to read as follows:

"(e) ACCIDENT OR HEALTH INSURANCE.—For purposes of this section, section 104, and section 106, the term 'accident or health insurance' means an approved State program under section 311 of the American Health Security Plan.".

(2) EMPLOYER CONTRIBUTIONS.—Section 106 of such Code (relating to contributions by employer to accident and health plans) is amended by striking "an accident or health plan" and inserting "accident or health insurance".

(3) CONFORMING AMENDMENT.—Section 105 of such Code is amended by striking subsection (h).

(b) BUSINESS EXPENSE DEDUCTION FOR HEALTH INSURANCE.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) GROUP HEALTH PLANS.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section unless the plan is an approved State program under section 311 of the American Health Security Plan.".

(c) RULES RELATING TO DEDUCTIONS FOR INDIVIDUALS.—

(1) SAME TREATMENT FOR SELF-EMPLOYED INDIVIDUALS AND BUSINESSES.—Section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended—

(A) by striking "25 percent of" in paragraph (1), and

(B) by striking paragraph (6).

(2) SIMILAR TREATMENT FOR OTHER INDIVIDUALS.—Subsection (d) of section 213 of such Code (relating to medical, dental, etc., expenses) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) MEDICAL CARE.—The term 'medical care' means American Health Security Plan premiums and cost-sharing amounts paid for coverage under an approved State program under section 311 of the American Health Security Plan.",

(B) by striking paragraphs (2), (6), (7), and (9), and by redesignating paragraphs (3), (4), (5), and (8) as paragraphs (2), (3), (4), and (5), respectively.

(d) TERMINATION OF CHILD HEALTH INSURANCE CREDIT.—Clause (i) of section 32(b)(2)(A) of such Code is amended by inserting "(0 percent for taxable years beginning after December 31, 1998)" after "6 percent".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any taxable year beginning after December 31, 1998.

SEC. 423. FEDERAL HEALTH TRUST FUND.

(a) TRUST FUND ESTABLISHED.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Health Care Trust Fund". The Trust Fund shall consist of such gifts and bequests as may be made and such amounts as may be deposited in, or appropriated to, such Trust Fund as provided in this Act.

(b) RECEIPTS.—

(1) TRANSFER OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(A) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts equivalent to 100 percent of the American Health Security Plan premiums received in the Treasury as the result of the mechanism described in section 421 of this Act.

(B) ADDITIONAL REVENUES.—There are appropriated to the Trust Fund amounts equivalent to the additional revenues received in the Treasury as the result of the amendments made by section 422 of this Act.

(C) TRANSFERS BASED ON ESTIMATES.—The amounts appropriated by subparagraphs (A) and (B) shall be transferred from time to time (not less frequently than monthly) from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes and premiums, specified in such subparagraphs, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes and premiums specified in such subparagraphs.

(2) TRANSFER OF FUNDS.—All amounts, not otherwise obligated, that remain in the Federal Hospital Insurance Trust Fund and the Federal Supplemental Medical Insurance Trust Fund on the first day of the fiscal year 1999 shall be transferred to the Trust Fund.

(3) APPROPRIATION OF ADDITIONAL SUMS.—For fiscal years beginning after September 30, 1998, there are hereby authorized to be appropriated, and are appropriated, to the Trust Fund such additional sums as equal the amounts appropriated with respect to title XIX of the Social Security Act, section 1079 of title 10, United States Code (CHAMPUS), and chapter 89 of title 5, United States Code, as in effect for fiscal year 1988. Such amount shall be adjusted each fiscal year by the increase in the Consumer Price Index (as determined by the Department of Labor) for the previous fiscal year.

(4) APPROPRIATION OF SUMS FOR ADMINISTRATIVE COSTS.—For fiscal years 1994, 1995, and 1996, there are hereby authorized to be appropriated, and are appropriated, to the Trust Fund such additional sums as may be required to make expenditures referred to in subsection (c)(2).

(5) RETURNED GRANT FUNDS.—Any returned grant funds as described in section 315(a)(2) of this Act shall be transferred to the Trust Fund.

(c) EXPENDITURES.—

(1) TO STATES.—Payments in each fiscal year to each State from the Trust Fund as determined under section 402 are hereby authorized and appropriated.

(2) ADMINISTRATIVE EXPENSES AND GRANTS.—There are hereby authorized and appropriated such sums as are necessary for the administrative expenses and grants described in sections 212(g), 304, 315(c) and 803 of this Act for each fiscal year.

(3) CONTINGENCY ACCOUNT.—There are hereby authorized and appropriated such sums as determined necessary by the Board to cover unanticipated events that affect the health care needs of individuals described in section 101(a), to be available without fiscal year limitation.

(d) INCORPORATION OF TRUST FUND PROVISIONS.—The provisions of subsections (b) through (e) of section 1841 of the Social Security Act (42 U.S.C. 1395t), as in effect on the day before the date of the enactment of this Act, shall apply to the Trust Fund in the same manner as such provisions apply to the Federal Supplemental Medical Insurance Trust Fund, except that any reference to the Secretary of Health and Human Services or the Administrator of the Health Care Financing Administration shall be deemed a reference to the Board.

(e) TRUST FUND OFF-BUDGET.—The receipts and disbursements of the Trust Fund and the taxes described in subsection (b)(1) shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

SEC. 424. STATE SOURCES OF REVENUES.

(a) IN GENERAL.—Each State shall be responsible for establishing a financing program for the implementation of the State program in the State. Such financing program may include—

(1) funds used to finance the State share of medicaid under title XIX of the Social Security Act as in effect on the day before the date described in section 902(f) of this Act,

(2) State and local funding for public hospitals and other indigent care programs, and

(3) State funding from general revenues, earmarked taxes, payroll taxes, sales taxes, and such other measures consistent with this Act as the State may provide.

(b) ON-GOING ENTITLEMENT.—Each State with a State program approved by the Com-

mission is entitled to funding from the Commission in the amounts provided under section 402.

TITLE V—CONGRESSIONAL CONSIDERATION

SEC. 501. RULES GOVERNING CONGRESSIONAL CONSIDERATION.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of disapproval resolutions described in subsection (b), and supersedes other rules only to the extent that such rules are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) TERMS OF THE RESOLUTION.—For purposes of this Act, the term "disapproval resolution" means only a joint resolution of the two Houses of the Congress, providing in—

(1) the matter after the resolving clause of which is as follows: "That the Congress disapproves the action of the Federal Health Board as submitted by the Board on _____", the blank space being filled in with the appropriate date; and

(2) the title of which is as follows: "Joint Resolution disapproving the action of the Federal Health Board".

(c) INTRODUCTION AND REFERRAL.—On the day on which the action of the Board is transmitted to the House of Representatives and the Senate, a disapproval resolution with respect to such action shall be introduced (by request) in the House of Representatives by the Majority Leader of the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader of the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader and Minority Leader of the House; and shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. If either House is not in session on the day on which such an action is transmitted, the disapproval resolution with respect to such action shall be introduced in the House, as provided in the preceding sentence, on the first day thereafter on which the House is in session. The disapproval resolution introduced in the House of Representatives and the Senate shall be referred to the appropriate committees of each House.

(d) AMENDMENTS PROHIBITED.—No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the committee or committees of either House to which a disapproval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the disapproval resolution and it shall be placed on the appropriation calendar. A vote on final passage of the disapproval resolution shall be taken in each House on or before the close of the 45th day after the disapproval resolution is reported by the committees or committee of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the disapproval resolution. If prior to the passage by one House of a disapproval resolution of that House, that House receives the same disapproval resolution from the other House then—

(A) the procedure in that House shall be the same as if no disapproval resolution had been received from the other House; but

(B) the vote on final passage shall be on the disapproval resolution of the other House.

(2) COMPUTATION OF DAYS.—For purposes of paragraph (1), in computing a number of days in either House, there shall be excluded any day on which the House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(1) MOTION TO PROCEED.—A motion in the House of Representatives to proceed to the consideration of a disapproval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) DEBATE.—Debate in the House of Representatives on a disapproval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the disapproval resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a disapproval resolution or to move to reconsider the vote by which a disapproval resolution is agreed to or disagreed to.

(3) MOTION TO POSTPONE.—Motions to postpone, made in the House of Representatives with respect to the consideration of a disapproval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) APPEALS.—All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a disapproval resolution shall be decided without debate.

(5) GENERAL RULES APPLY.—Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a disapproval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) MOTION TO PROCEED.—A motion in the Senate to proceed to the consideration of a disapproval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) GENERAL DEBATE.—Debate in the Senate on a disapproval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader or their designees.

(3) DEBATE OF MOTIONS AND APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with a disapproval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the disapproval resolution, except that in the event the manager of the disapproval resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the Minority Leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a disapproval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) OTHER MOTIONS.—A motion in the Senate to further limit debate is not debatable. A motion to recommit a disapproval resolution is not in order.

(h) POINT OF ORDER REQUIRING SUPERMAJORITY FOR MODIFICATIONS TO ACTIONS ONCE APPROVED.—

(1) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any amendment to the actions of the Federal Health Board except as provided in paragraph (2).

(2) WAIVER.—The point of order described in paragraph (1) may be waived or suspended in the House of Representatives or the Senate only, by the affirmative vote of three-fifths of the Members duly chosen and sworn.

TITLE VI—PRIVATE OPTIONS

SEC. 601. PRIVATE SUPPLEMENTAL INSURANCE.

Except as provided in section 603, nothing in this Act shall be construed to prohibit the purchase of private insurance that provides coverage of health care and long-term care services supplementing the services covered under this Act.

SEC. 602. OPTION TO PURCHASE DUPLICATIVE PRIVATE INSURANCE.

Except as provided in section 603, nothing in this Act shall be construed to prohibit the purchase of private insurance that provides coverage of health care and long-term care services covered under this Act.

SEC. 603. LIMITS ON PRIVATE INSURANCE.

(a) IN GENERAL.—No insurer may issue a private insurance policy if such policy provides coverage for the cost-sharing requirements for health care services and other non-long-term care services covered under this Act.

(b) CERTIFICATION OF NOTIFICATION.—At the time of sale, the issuer of any private insurance policy shall secure in writing a certification by the purchaser that the purchaser has been informed of any duplication in coverage of the services covered under this Act.

(c) REVIEW OF PRACTICES.—No later than 2 years after the full implementation of the provisions of this Act, the Comptroller General of the United States shall review the practices of the private insurance industry and make such recommendations as necessary to the Congress in order to prevent fraud and abuse in the sale of duplicative or supplemental private health insurance and to protect the integrity of the American Health Security Plan.

(d) OBLIGATION TO PAY PREMIUM REMAINS.—The purchase of any type of private health insurance policy shall not relieve the purchaser of the payment of the American Health Security Plan premium imposed under section 421.

TITLE VII—EXPANSION OF OUTCOMES RESEARCH AND DELIVERY OF SERVICES IN UNDERSERVED AREAS

SEC. 701. EXPANSION OF OUTCOMES RESEARCH.

Paragraph (1) of section 1142(i) of the Social Security Act (42 U.S.C. 1320b-12(i)) is

amended by striking subparagraphs (D) and (E) and inserting the following:

"(D) $225,000,000 for fiscal year 1993;

"(E) $275,000,000 for fiscal year 1994; and

"(F) $325,000,000 for fiscal year 1995.".

SEC. 702. NATIONAL HEALTH SERVICE CORPS.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subpart II of part D of title III of the Public Health Services Act (42 U.S.C. 254d et seq.) for fiscal year 1993, an amount equal to—

(1) the amount appropriated under such subpart for fiscal year 1992; and

(2) an additional amount equal to 40 percent of the amount described in paragraph (1).

When making loans under such subpart, priority should be given to students from schools that have primary care programs and that stress underserved practices.

(b) COMMUNITY FINANCING PROGRAM.—Subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) is amended by inserting after section 336, the following new section:

"SEC. 336A. COMMUNITY FINANCING PROGRAMS.

"(a) ESTABLISHMENT.—The Secretary may award grants under this section to local communities to enable such communities to establish programs to finance the health-related education of residents of such communities.

"(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a community shall prepare and submit to the Secretary an application, at such time, in such manner and containing such information as the Secretary may require.

"(c) USE.—A community that receives a grant under subsection (a), shall use amounts received under such grant to provide assistance to local residents with respect to the health-related educational expenses of such residents. Such community shall not provide assistance under a grant under this section to a local resident unless such resident agrees to practice in a health-related field in such community for not less than 4 years after graduation. In providing assistance to such residents, the community should give priority to residents attending schools that have primary care programs and that stress underserved practices.

"(d) AMOUNTS.—The amount of a grant awarded to a community under this section shall not exceed 75 percent of the cost to such community in administering and implementing a community financing program under this section.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this section, $10,000,000 for each of the fiscal years 1993 through 1995.".

SEC. 703. COMMUNITY AND MIGRANT HEALTH CENTERS.

Subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) is amended by inserting after section 330, the following new section:

"SEC. 330A. NEW COMMUNITY AND MIGRANT HEALTH CENTERS.

"(a) NEW COMMUNITY AND MIGRANT HEALTH CENTERS.—

"(1) IN GENERAL.—The Secretary shall award grants to eligible entities to expand the availability of comprehensive primary health services (as defined in section 330(b)(1)) in medically underserved areas.

"(2) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

"(A) be an entity that—

"(i) meets the requirements of section 329(a) or 330(a) for being a migrant or community health center, though not a recipient of a grant under either section;

"(ii) does not meet the requirements of section 329(a) or 330(a) for being a migrant or community health center, but that provides assurances satisfactory to the Secretary, including subsequent demonstrable evidence, that such entity will meet the requirements of either section not later than 2 years after receiving a grant under this section;

"(iii) is eligible for a planning grant under sections 329(c) or 330(c); or

"(iv) is able to provide a subset of the required services, be able to prove that it cannot meet the requirements of section 329(a) or 330(a), and demonstrate that it is the most qualified entity in the service area; and

"(B) prepare and submit to the Secretary an application at such time, in such manner and containing such information as the Secretary may require.

"(b) EXPANSION OF CURRENT COMMUNITY AND MIGRANT HEALTH CENTERS.—

"(1) IN GENERAL.— Community and migrant health centers in existence on the date of enactment of this section may utilize any increase in revenue experienced as a result of the increase in the number of insured patients treated for the expansion of the amounts and types of services furnished, to serve additional patients or areas, or to promote the recruitment, training or retention of personnel.

"(2) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress recommendations concerning the provision of paragraph (1).

"(c) REPORT.—Not later than 3 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the need for further migrant and community health center primary care service capacity development and recommendations concerning the appropriate level of support needed for activities to address such capacity development.

"(d) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal years 1993 through 1995.

"(2) ADDITIONAL AMOUNTS.—Amounts provided under this section shall be in addition to any amounts appropriated under sections 329 and 330.".

TITLE VIII—MALPRACTICE REFORM

SEC. 801. GRANTS TO STATES.

(a) IN GENERAL.—The Board shall make grants to States for the development and implementation of medical malpractice reforms, as described in section 802. A State shall use a grant made under this section to develop, implement, and evaluate the effectiveness of such reforms.

(b) COMPLIANCE WITH FEDERAL STANDARDS.—Beginning 2 years after the implementation of the reforms, each State shall annually submit a report to the Board containing such information as the Board may require to determine whether the State is in compliance with the terms of the grant made under this section.

SEC. 802. CRITERIA FOR STATE MALPRACTICE REFORMS.

(a) IN GENERAL.—Each State must demonstrate to the Board that the reforms to the State medical malpractice system that the State develops or has already adopted or intends to adopt meet the criteria described in subsection (b).

(b) CRITERIA.—The criteria for medical malpractice reforms are as follows:

(1) COSTS.—Decrease administrative costs and reduce incentives for filing non-meritorious claims.

(2) EFFICIENCY.—Reduce the time between the filing of medical malpractice claims and case resolutions using procedures which may include the establishment of voluntary alternative dispute resolution mechanisms, such as mediation, arbitration, minitrials, and summary judgments, to facilitate earlier case resolutions.

(3) ACCESS.—Develop mechanisms to ensure that victims of malpractice or medically injured patients have the meaningful ability to seek compensation, including voluntary alternative dispute resolution mechanisms designed for small claims.

(4) QUALITY.—Improve the quality of health care by strengthening mechanisms that reduce the occurrence of medical injury, and detect and sanction health care professionals who commit health care malpractice.

(5) EQUITY.—Enhance the fairness of compensation provided to injured individuals for both medically and non-medically-related damages, and increase incentives for experience rating of insurance premiums.

(c) BOARD STUDY OF CRITERIA.—

(1) STUDY.—The Board shall collect data from the States awarded grants under section 801 on the effects of the reforms established to meet the criteria described in subsection (b) on the medical malpractice systems of such States. The data shall be used to evaluate the effectiveness and appropriateness of the criteria described in subsection (b) in addressing the problems of the medical malpractice systems of such States. The Board may modify such criteria based on such study.

(2) REPORT.—The Board shall report the results of the study described in paragraph (1) to the Congress on a periodic basis.

SEC. 803. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated for grants under this title such sums as may be necessary for fiscal years 1993 through 1996.

TITLE IX—EFFECTIVE DATES; TERMINATIONS; TRANSITION; RELATION TO ERISA.

SEC. 901. EFFECTIVE DATES.

(a) FEDERAL ADMINISTRATION.—Not later than October 1, 1994, the Board shall promulgate regulations regarding the health care and long-term care services covered under this Act and the related patient cost-sharing schedules under title II, develop the means for computing the National Health Budget and Federal contributions to the States under subtitle A of Title IV, and establish the procedures for reviewing and approving State plans under section 311.

(b) PROVISION OF SERVICES.—

(1) PREVENTIVE AND PRIMARY CARE SERVICES.—The provision of preventive and primary care services under approved State plans, as established under section 201, shall take effect with respect to services furnished on or after October 1, 1996.

(2) ACUTE CARE SERVICES.—The provision of acute care services under approved State plans, as established under section 201, shall take effect with respect to services furnished on or after October 1, 1997.

(3) LONG-TERM CARE SERVICES.—The provision of long-term care services under approved State plans, as established under section 202, shall take effect with respect to services furnished on or after October 1, 1998.

(c) MODIFICATION OF TRANSITION PERIOD.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act and to the extent the Board determines it is appropriate and

fiscally responsible, the Board may promulgate regulations to reduce the period between the date of the enactment of this Act and the effective dates otherwise provided in this Act.

(2) EFFECT OF BOARD ACTIONS.—Any determination made by the Board under this subsection to change an effective date under this Act shall be submitted to the Congress at least 6 months before the new effective date, and shall have the force of law, unless within 60 days of the submission of such determination, the Congress enacts a disapproval resolution under the procedures described in section 501.

SEC. 902. TERMINATION OF OTHER PROGRAMS.

(a) MEDICARE AND MEDICAID.—

(1) IN GENERAL.—Titles XVIII and XIX of the Social Security Act are repealed.

(2) REPEAL OF HOSPITAL INSURANCE TAXES UPON FULL IMPLEMENTATION OF PLAN.—Sections 1401(b), 1402(k)(2), 3101(b), 3111(b), 3121(x)(2), 3231(e)(2)(B)(i)(II), and 6413(c)(3) of the Internal Revenue Code of 1986 are repealed.

(b) REPEAL OF CHAMPUS PROVISIONS.—

(1) AMENDMENTS TO CHAPTER 55 OF TITLE 10.—Sections 1079 through 1083, 1086, and 1097 through 1100 of title 10, United States Code, are repealed.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 55 of title 10, United States Code, is amended by striking out the items relating to the sections referred to in paragraph (1).

(3) CONFORMING AMENDMENTS.—Chapter 55 of title 10, United States Code, is amended as follows:

(A) DEFINITION.—Section 1072 is amended by striking out paragraph (4).

(B) REIMBURSEMENT OF THE DEPARTMENT OF VETERANS AFFAIRS.—Section 1104(b) is amended—

(i) in the subsection heading, by striking out **"from CHAMPUS funds"**; and

(ii) by striking out "from funds" and all that follows and inserting in lieu thereof "for medical care provided by the Department of Veterans Affairs pursuant to such agreement.".

(c) REPEAL OF FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—Chapter 89 of title 5, United States Code, is repealed.

(d) EFFECTIVE DATE.—The repeals and amendments made by this section shall take effect on October 1, 1998.

SEC. 903. TRANSITION.

(a) IN GENERAL.—The Board shall issue such regulations as are necessary to provide for a transition to the American Health Security Plan established under this Act from the programs repealed under section 902.

(b) RELATION TO OTHER PROGRAMS.—The Board shall recommend to the Congress appropriate legislative proposals for the amendment or repeal of any other Federal program inconsistent with, or duplicative of, the principles of the American Health Security Plan established under this Act.

SEC. 904. RELATION TO ERISA.

The provisions of the Employee Retirement Income Security Act are superseded to the extent inconsistent with the requirements of this Act.

AMERICAN HEALTH SECURITY PLAN—BILL SUMMARY

This bill would create a universal health system that is publicly-funded, administered by the states, and whose specific services and budget are determined by an independent Federal Health Board (modeled after the Federal Reserve Board to minimize of political interference). It preserves the best features of the private delivery system, establishes an overall budget for health spending in the public sector, and maintains an important role for private insurance.

TITLE I: ELIGIBILITY AND ENROLLMENT

A. Eligibility: Every resident of the United States, whether a citizen or a legal resident alien, is entitled to coverage of health care services under this Act.

B. Enrollment: States will enroll individuals resident in the State on the effective date of the Act, and will automatically enroll individuals at the time of birth or at the time of establishment of permanent residence in the State.

C. Portability: State programs may not impose a waiting period longer than 3 months for eligibility of new residents, and must provide payment for covered services for former State residents during their new State's waiting period. When residents of a State are temporarily absent, the home State will pay for health services (at the rate established in the home State). Emergency care outside the United States will be covered by the State plan.

TITLE II: BENEFITS

A. Acute Care Services: The categories of services covered under this act include:

1. Inpatient and outpatient hospital care, including 24-hour per day emergency services.
2. Diagnostic and screening services.
3. Medically necessary services.
4. Preventive care (including immunizations, pre-natal and well-baby care, etc.).
5. Prescription drugs, biologicals, and devices.
6. Substance abuse treatment.
7. Mental health services.
8. Hospice care.
9. Habilitation and rehabilitation services.
10. Home medical equipment and prosthetics.

Limitations: States may not limit the amount, duration, or scope of services specified by the Federal Health Board.

Exclusions: Cosmetic surgery except for medically necessary reconstruction. Private rooms and other amenities, unless medically necessary.

Cost-sharing: States may not impose cost-sharing beyond that specified by the Board. The Board will determine copayments and out-of-pocket limits, based on several principles: assuring administrative simplicity and efficiency, maintaining the fiscal integrity of the public plan, deterring the unnecessary use of services, encouraging health behaviors, maximizing economic fairness, and minimizing financial barriers to appropriate care.

B. Long-term care services:

Eligibility: The Board will determine the standards for eligibility for institutional and for home and community-based long-term care services based on an individual's ability to perform activities of daily living and instrumental activities of daily living (ADLs and IADLs), and/or the determination of comparable cognitive or behavioral impairment. Eligibility will be determined by a case manager.

Specific services:

1. Home and community-based services, such as nursing care and rehabilitative and restorative care.
2. Nursing home care.
3. Hospice care.
4. Home medical equipment.
5. Services for individuals with developmental disabilities and mental illness.

Cost-sharing: The Board will establish an income-related schedule that will take into account contributions by patients based on their average expenditures if they were living in the community.

Income protection: Cost sharing will be reduced on an income-related basis to ensure that the income of the individual is sufficient to retain a personal needs allowance to cover all items needed in addition to those provided by the long-term care facility and to maintain the individual's primary residence, as well as independence once long-term services are no longer needed.

Spousal protection: Cost-sharing will be reduced on an income-related basis to ensure that the income of the spouse or dependent is not reduced below the level currently provided under Title XIX of the Social Security Act.

Case management: All services will be made available through a case manager who will be responsible for matching services to needs, as well as coordinating the delivery of those services. Specific responsibilities include the initial assessment and periodic reassessment of the need for services; development of a care plan; and the authorization and coordination of services to meet specific needs.

Long-Term Care Services Assessment Commission: A 10-member commission will be appointed by the Director of OTA for 7-year terms. Membership will be comprised of long-term care providers, other health and social service professionals, health services and economics experts, and consumer representatives. This commission will exist for 7 years, then be dissolved. Its duties are to make recommendations to the Board regarding the adequacy and appropriateness of long-term care services, criteria for eligibility, cost-sharing, financial protection, and the overall functioning of long-term care services.

TITLE III: FEDERAL AND STATE ADMINISTRATION

A. Federal Health Board:

Composition: The Board will consist of 9 members, appointed by the President and confirmed by the Senate for staggered terms of 9 years and eligible for re-appointment. Candidates must have backgrounds in health policy, health economics, the healing professions, and the administration of health care institutions, and at least 1 must represent consumers. Due regard must be given to geographic, urban, and rural representation, and no more than 5 members may be affiliated with a single political party. Once appointed and confirmed, members of the Board may only be removed for cause.

Duties: The Board is responsible for the overall administration of the Plan. It will establish the specific services to be provided within the general benefits categories, determine the budget necessary to do so, allocate appropriate resources to the States, and, within guidelines established in Title IV, set specific levels of the public premium Additional duties are to: facilitate the exchange of information among States; establish and update minimum quality standards; establish uniform reporting requirements; review and approve state consortia; and assist States in developing systems to minimize fragmented care, including the use of managed care and other organized delivery systems.

B. Federal Health Advisory Council:

This Council will consist of 15 members appointed by the Board for staggered terms of 3 years, representing consumers, providers, unions, health care experts, senior citizen groups, and rural health experts. Its respon-

sibility is to study the overall functioning of the program, including consumer and provider satisfaction, and to make recommendations for improvement to the Board.

C. Federal Health Priorities Council:

This Council will consist of 15 members appointed by the President and confirmed by the Senate for terms of 5 years. Its members are to be representative of medicine, dentistry, mental health care, nursing, social services, ethics, economics, business, and consumer groups. Its duties are to conduct public hearings and, building on outcome research, make recommendations on how health care dollars are to be allocated within the public plan—specifically, that services should be provided under the public plan, and that ones should not be. It will report to the Board a list of health services ranked by priority, to represent the comparative benefits of each service to the populations. Its report will be accompanied by a report of an actuary to determine the funds necessary to cover the costs of the services included in the annual overall budget. These recommendations will be used by the Board in making its determination of covered services.

D. State Programs:

Each state must submit its plan for providing covered services to the Board for its review and approval. States are encouraged to form consortia with other states for the more efficient administration of plans. The Board has the authority to approve those agreements, subject to Congressional review.

Program requirements: The state program must provide for adequate financing of services through a designated fund; for adequate administration, including the designation of a single nonprofit State agency; and for the establishment of specific accounts within the fund. The State is to create an institution reimbursement board to negotiate overall operating, capital, and health training budgets with hospitals and other health care and long-term care institutions. It must have a practitioner reimbursement board to negotiate reimbursement rates for participating practitioners. The State may create a State advisory board to oversee and review the performance of the program. There must be an organized grievance procedure.

Fiscal Intermediaries: Each State or consortium may contract with fiscal intermediaries, that may be private insurance companies or other entities, to administer the plan. The intermediary is to process claims and reimbursements, distribute the allocation of funds, and may contract to perform other services on behalf of the State. However, the fiscal intermediary may not participate in the negotiating processes that establish the operating budgets or practitioner reimbursement rates.

State waivers: State may obtain waivers to implement alternative and innovative methods of reimbursing providers, patient cost-sharing arrangements, and administrative structures, or the use of health plans paid through a capitation method. A State must continue to provide adequate financing and at least the minimum benefits defined by the Board; provide universal coverage; meet minimum quality standards; not impose cost-sharing in excess of that established by the Board; not increase administrative burdens to providers and patients; and allow individuals freedom of choice in selecting health plans.

Managed care: State are encouraged to develop managed care programs, and the Federal Health Board will sponsor efforts to encourage states and providers to create other innovative approaches to delivery of services.

Organized approaches to delivery of services: The Board will sponsor efforts to encourage States and providers to develop and expand organized approaches to health care delivery, such as HMOs, hospital-based and community-oriented team health services, and neighborhood-hospital-home health care plans.

TITLE IV: HEALTH BUDGETS

A. The National Health Budget:

The Board establishes a budget on either an annual or biennial basis that estimates the total expenditures of the Federal and State Governments for the defined health services, including administrative costs. It apportions funds to States based on a variety of factors, including risk groups within the State; particular social, environmental, epidemiological, or other considerations that affect the health status or need for services within the State; the geographic distribution of the state's population; and the quality and availability of the existing health services within the State. On average, the Federal contribution to a State plan will be 80%, but may be adjusted narrowly up or down based on the state's per capita income, taxable resources, and economic status.

B. State Payments:

States will be responsible for operating four accounts within the fund:

1. Payments to facilities: The State will establish a board to negotiate overall operating budgets with each hospital, nursing home, and other facility in the State. The board will make annual payments of funds necessary and reasonable to provide necessary hospital and other institutional services.

2. Capital budgets will also be negotiated by the board, covering all capital expenditures, regardless of the source of funding.

3. Health training budgets will also be negotiated with institutions, including a separate account for direct and indirect graduate medical education-related expenses in hospitals and other health care and longterm care institutions. The distribution of these funds should include at least 50% to primary care training programs, with periodic readjustment thereafter as needed to encourage primary care programs. The State must also provide funding for non-hospital based residency programs, and must also take into account the higher costs of placing students in rural residency programs, and must provide for the education and training of non-physician practitioners.

4. Practitioner Payments: The practitioner reimbursement board will negotiate with organizations representing the various practitioner disciplines to derive a relative value scale fee schedule that provides appropriate levels of payment for primary care services, equal payment for services regardless of provider, and a process for keeping overall reimbursement in line with the practitioner budget.

Nonphysician Practitioner Provisions: When services are provided by nonphysicians, the reimbursement rate shall be the same as for physicians.

Mandatory assignment: Except for the cost-sharing provisions established by the Board, payment by a State program shall constitute payment in full.

C. Revenues: The Federal Health Trust Fund:

Federal sources: Three sources of revenue at the Federal level will be deposited into the Health Trust fund to finance benefits covered under this Act.

1. An American Health Security Premium, paid by individuals. The Board will determine the amount to be funded, and will collect it using a mechanism that is income-based, progressive, payable in increments; and payable either by individuals or by employers (at their option) on behalf of employees.

2. An employer contribution equal to an amount necessary to prevent an increase (when compared to pre-enactment levels) in the household proportion of total health care expenditures. The amount per employer is based on an employer's ability to pay as reflected by the size of the work force and profitability.

3. Funds equivalent to the amounts currently provided for in Medicare, Medicaid, and CHAMPUS in the Federal Budget, and increased each year by the CPI.

D. Revenues: State Sources:

States will finance their share of the public plan by contributing the preenactment State share of medicaid, and any other source necessary to provide adequate funding.

TITLE V: CONGRESSIONAL CONSIDERATION

The Federal Health Board will file a report with both Houses of Congress detailing the services to be covered and the financing necessary to provide those services. Unless disapproved within 60 days by a concurrent resolution of both Houses, the Board's report takes effect. Debate is limited, and amendments to the resolution are not in order unless the point of order is waived by a three-fifths majority.

TITLE VI: PRIVATE OPTIONS

A. Supplemental Insurance:

Private supplemental insurance is permitted. Premiums will not be tax-deductible.

B. Duplicative Insurance:

Private insurance that duplicates services provided under the public plan is permitted, although premiums are not tax-deductible, and payment of the public premium is still required of those who purchase this coverage.

C. Limits on private insurance:

Insurance may not be sold that covers the cost-sharing requirements of the public plan.

[The Act thus envisions three major roles for insurance companies:

—as contractors to process claims and/or administer benefits and to create and operate managed care networks;

—to sell supplemental insurance;

—to sell duplicative insurance.]

TITLE VII: UNDERSERVED AREAS

Substantially increased funding is provided for the National Health Service Corps and for Community and Migrant Health Centers.

TITLE VIII: MALPRACTICE REFORM

The Board will award grants to states for the development and implementation of these reforms. Reforms must meet the following criteria:

1. Reduced administrative costs;
2. Improved efficiency;
3. Ensured access;
4. Improved quality of care;
5. Reduced uncertainty and unpredictability.

By Mr. BUMPERS (for himself, Mr. DURENBERGER, Mr. NUNN, Mr. GRASSLEY, Mr. LEVIN, Mr. SHELBY, Mr. LIEBERMAN, Mr. BREAUX, Mr. INOUYE, Mr. REID, Mr. KERRY, Mr. FOWLER, Mr. DODD, Mr. GLENN, and Mr. DOMENICI):

59-059 O—96 Vol. 138 (Pt. 6) 24

S. 2514. A bill to amend the Internal Revenue Code of 1986 to allow taxpayers a bad debt deduction for certain partially unpaid child support payments and to require the inclusion in income of child support payments which a taxpayer does not pay, and for other purposes; to the Committee on Finance.

CHILD SUPPORT TAX EQUITY ACT

Mr. BUMPERS. Mr. President, today I am introducing legislation to provide equity in the tax laws between the taxpayers, principally mothers, who are unable to collect the child support that is due to them and the taxpayers, principally fathers, who fail to pay the child support that they owe.

The legislation also provides equity in the access that mothers have to the services of the IRS in the collection of child support payments between the mothers who are recipients of aid to families with dependent children and those who are not.

This legislation is called the Child Support Tax Equity Act because it gives like-situated taxpayers the same rights under our tax laws. It eliminates the discrimination that now exists against taxpayers, principally mothers, who are owed child support payments and in favor of taxpayers, principally fathers, who refuse to pay the support that they owe.

OUTLINE OF LEGISLATION

The legislation permits mothers to take a nonbusiness bad debt deduction for the amount of child support that is due to them but which they are unable to collect. This amendment is consistent with the tax policy for nonbusiness bad debt deductions and it is necessary because mothers are not now permitted to take the bad debt deduction for unpaid child support debts.

In terms of the bad debt deduction for unpaid child support payments, this legislation simply puts mothers who are unable to collect child support on a par with businesses and other taxpayers who can't collect their debts. Mothers and businessmen both have debts that they cannot collect. They both suffer an economic loss. And they both deserve a bad debt deduction. This is a matter of simple equity.

The legislation then includes the amount of child support that is not paid as taxable income to the fathers who fail to pay the child support that they owe. This amendment is also consistent with the tax policy for discharge of indebtedness and it is necessary because fathers are now permitted to avoid any tax liability when they refuse to honor their child support debts.

When a taxpayer is discharged from a debt, that taxpayer is deemed to have received income in the amount of the debt that was discharged. If we did not have this provision in the tax code, everyone would be giving gifts to everyone else and it would all be tax exempt. The discharge of indebtedness provision ensures that taxpayers who receive an economic gain in the form of a discharged debt are treated the same as taxpayers who receive an economic gain in the form of a salary or wage.

In terms of the discharge of indebtedness provision, the legislation simply puts the fathers who aren't paying child support on a par with businesses and other taxpayers who don't repay their debts. Fathers and other debtors both have obligations that they do not honor. They both reap an economic windfall when they do not repay their debts. And they both deserve to recognize taxable income on the amount of the debt that they do not pay. This is also a matter of simple equity.

This pairing of the bad debt deduction with the discharge of indebtedness provision is perfectly appropriate. When the mother takes the bad debt deduction for a debt she cannot collect, it follows that the father has been discharged from his child support indebtedness for the debt he is not paying.

The bad debt deduction for the mother and the discharge of indebtedness for the father are logical corollaries, book ends of the same transaction, and perfectly just. When a debt is written off, that debt is, in effect, discharged. If one taxpayer realizes a loss—she can't collect the debt that is due to her and her children—and is permitted a deduction for that loss, the other taxpayer realizes a gain—he no longer has to pay the debt—and he is taxed on the value of that gain.

This is symmetrical and it is equitable in terms of tax policy and it is clearly just in terms of social policy. We have every reason to assist mothers who cannot collect child support and we have every reason to penalize fathers who refuse to pay the support they owe to their children.

REVENUE IMPLICATIONS OF TAX PROVISIONS

In the current budget climate the key issue for any new proposal is its cost. On this issue this legislation stands on very strong grounds.

The nonbusiness bad debt deduction for unpaid child support will lose revenue and this revenue loss must be financed under the pay-as-you-go requirements of last year's deficit agreement. Fortunately, according to the Joint Committee on Taxation the discharge of indebtedness provision will raise more than enough revenue to pay for the new bad debt deduction.

In fact, the joint committee finds that the discharge of indebtedness provision raises $30 million more in revenue over the first 6 years than the bad debt deduction provision loses. This finding is based on the fact that the fathers who fail to pay child support tend to be in a higher tax bracket than the mothers who are not paid child support. So, when the fathers pay tax on the discharge of their child support debts it raises more revenue than when the mothers take a bad debt deduction for the amount of the child support payments that they cannot collect.

This revenue estimate also takes into account the likelihood that the IRS will not be able to collect taxes for the discharge of indebtedness in each case where a taxpayer has claimed a bad debt deduction. The fact that the fathers are in higher tax brackets more than offsets this factor.

The revenue estimate year-by-year finds that there is no revenue impact in the first year, the year waiting period required for all claimants for the bad debt deduction. Then in the first year in which these deductions can be claimed, 1993, the joint committee finds that the legislation loses $15 million in revenue. The third year the bill loses $14 million. This is the year in which more bad debt deductions will probably be claimed but the year in which discharge of indebtedness taxes will be paid. In the fourth year—the first year when the bill is fully implemented—the bill raises $41 million. In the fifth year the bill raises $10 million and in the sixth year it raises $8 million. The net revenue impact is to raise $30 million over the 6-year period.

I have obtained nine additional revenue estimates for other versions of the bill. Every one of these versions of the bill raises revenue. For example, if we limited the bill to taxpayers with less than $50,000 in adjusted gross income—as provided for in the bill I am introducing today—but increase the per child limit from $5,000 to $7,500, the revenue gain over the 6-year period would be $24 million. If we increased the income limit to $60,000 and set the per child limit at $5,000, the revenue increase would be $9 million. And, finally, if we set the income at $60,000 and set the per child limit at $7,500, the revenue increase would be $5 million.

The key point is that every version of the bill I have considered raises revenue. Everyone of them finds that the father's payments for the discharge of indebtedness will exceed the mother's claims for the bad debt deduction.

STRENGTHENING EXISTING CHILD SUPPORT PROGRAMS

The bill could be drafted simply to provide for the bad debt deduction and the discharge of indebtedness and we could use the net gain in revenue to reduce the deficit. I had hoped that the bill would raise more in revenue and that we could use the revenue that is raised to increase the availability and effectiveness of some of the other Federal child support enforcement programs. I have determined not to do this, but let me outline some of the options that are available here.

We need to find a way to waive some of the fees that currently restrict the utilization of the IRS tax refund intercept program and full enforcement program. The fees and payments that we should eliminate are the payment to

the IRS from all families receiving Federal tax offset services to cover administrative costs; an application fee charged to new non-AFDC families receiving child support enforcement services; and additional fee for the use of Federal tax offset services by non-AFDC families; and a cost recovery fee for genetic tests applied to non-AFDC absent parents.

These latter three fees are only assessed for non-AFDC mothers who are seeking IRS assistance in collecting child support. By waiving these fees we could make this IRS assistance available to welfare and nonwelfare mothers on an equal basis.

The Congressional Budget Office finds that these provisions cost nothing in the first 2 years, cost $55 million in the third year, $65 million in the fourth year and $75 million in the fifth year.

Taken together these expenditures cost $140 million in the fourth and fifth years when the tax provisions raise $30 million in those same years. This means that had I waived these fees I could not claim that the bill is revenue neutral. The bill would have hurt our deficit situation, so reluctantly I decided not to propose waiving the fees in this bill. Had we raised more revenue, that is how I would have used the funds. I will continue to look for ways to waive these fees.

UNPAID CHILD SUPPORT

Let me share with you some revealing and shocking facts about the problem of unpaid child support. These facts indicate that we must do everything we can to help mothers who are unable to collect the child support to which they are entitled.

In 1989, there were a total of 9,955,000 mothers who have children under the age of 21 and are head of a household without a father present. Of that number, 4,953,000 families were expecting child support payments. However, 24.8 percent of those families received nothing at all. The actual number involved is 1,228,000 families receiving nothing at all. Another 1,179,000 families received only a partial payment, another 23.8 percent. So, 2,407,000 million families or 58.6 percent of those that expected to receive child support either received no payment or received only a partial payment.

Of the 9,955,000 families where the father was not present 4,207,000 did not expect to receive support. Only 923,000 of these, however, did not want to receive an award of support—674,000 could not locate the father and 810,000 just gave up looking.

In 1989 $16.3 billion in child support was owed to families, yet only $11.2 billion was paid. This leaves a gap of $5.1 billion that was not paid. But, this is only the amount due for that year. If one counts the amounts due for previous years, the amount due increases by $23.9 billion.

This loss of child support is critical to the families to which it is owed in due child support payments. The average income of those families was only $11,793. This income is countered by the average income of those who do receive payments, which is $14,245. In those families who receive nothing, the breakdown as to the number of children in the family is as such: there were a total of 622,000 families with 1 child, 396,000 families with two children involved, 99,000 families with three children involved, and 37,000 families where there was four or more children involved.

Of the families receiving no child support payments, 346,000 have incomes below the poverty level. In those cases, the number of families with: there was a total of 162,000 families where there was one child involved. In 112,000 cases, there was two children involved, in 48,000 cases, three children were involved, and in 24,000 cases, there were four or more children involved.

Furthermore, of the cases where no payment was made, 913,000 were court ordered payments, and 195,000 were voluntary written payments.

Since I have been focusing solely on the families to this point, let me shift my emphasis to those who are paying, or in this case are supposed to pay child support. In a recent study done of 649 absent parents, 63 percent of those reported some type of income. Of those who reported some type of income, 122 or 20 percent had earned over $10,000. This suggests some permanence in their employment. In eight cases, the parent earned over $30,000 and one father paying no child support earned $83,900. The data concludes from this survey, that absent parents can and should be paying more or can afford to pay more in child support. This survey represents the larger problem that has been encountered by custodial parents, namely that support is not occurring in all cases.

Let me talk for a minute about Arkansas. We have data for the cases managed by the Office of Child Support Enforcement and this data represents perhaps 75 percent of the total child support problem. In 1989 for these OCSE cases $153,832,000 was owed, an amount that includes arrearages. Of this amount only $27,094,000 was paid, 17.6 percent. If one takes the payments due only for 1989 $57,210,867 was due and only $26,144,103 was paid, 47.3 percent. This represents 73,485 families in Arkansas. Let me emphasize that this is only about 75 percent of the total.

The facts tell the story. We are encountering a grave problem in enforcing our child support payments and this legislation will help the mothers who are not receiving the support they need to raise their children. It is only just that those who fail to pay the support that is owed should pay the cost of the assistance this bill provides.

INCENTIVES UNDER PROPOSED LEGISLATION

All tax laws provide incentives to taxpayers. In drafting this bill I have been very concerned about any possible incentives for mothers not to attempt to collect the child support payments to which they are entitled or for fathers not to pay the amounts of child support that they owe.

I am convinced that neither of these incentives is created by this legislation and other incentives are created that will increase the collection efforts and payments that are made. In short, this bill will help the situation.

A mother only qualifies for the deduction if she has first obtained a "divorce or separation instrument" that obligates the father to make child support payments. As I have said a divorce or separation instrument is a decree of divorce or separate maintenance or a written instrument incident to such a decree or a written separation agreement. This requirement for the deduction gives mothers an incentive to formalize the child support payment obligation. Mothers who obtain these legal documents are much more likely to be able to collect child support payments than those who don't. So, in creating an incentive for mothers to formalize the child support payment obligation this legislation will help them to collect the payments to which they are due.

Mothers who take the deduction in most cases will be in the 15-percent tax bracket. The deduction is worth only 15 percent of the face value of the child support that is owed. She can only collect the other 85 percent of the claim by continuing her efforts to enforce the payment obligation. The legislation permits her to do this and, if she is later successful in securing payment, she will simply declare that payment as income in the year in which it is received.

When a father has been given notice by the mother or the IRS, he is likely to be shocked. He will be facing a situation where he must either pay the mother or pay the IRS. He would only have to pay the IRS the amount of tax that is due and this amount will vary with the tax bracket in which he finds himself. But, paying 15 percent, 28 percent or more of the amount that is due may well encourage him to make the payments to the mother. Given a choice of paying the IRS or paying the child support for his children, many fathers would prefer the latter.

When the father is found by the IRS, the IRS will not be giving the mother information on his location. This would violate his confidentiality as a taxpayer. But, he will have been found and that may have a major psychological impact on his inclination to pay. He will no longer be immune to the mother's attempts to collect the child support. He will be paying a penalty for his failure to make the payments that are due.

SUPPORT FOR LEGISLATION

I am happy to have the support of a number of child support enforcement advocacy groups.

Mr. Harry Wiggins is the director of the Division of Child Support Enforcement for the State of Virginia and serves as the executive director of the National Council of State Child Support Enforcement Agencies and he has written me a letter saying:

This proposal is an excellent piece of legislation in financially aiding millions of custodial parents and children who are unable to receive the support due them, support which in most cases they have made every possible effort to obtain.

Ms. Geraldine Jensen is the national president of the Association for Children for Enforcement of Support, Inc., and she has written to say:

ACES is very supportive of the Child Support Tax Equity Act of 1992 * * * (W)hen it becomes law (it) will assist millions of children who are entitled to child support. ACES believes that the (bill) will work to alleviate child poverty caused by no-support.

Ms. Paula Roberts, senior staff attorney for the Center for Law and Social Policy, has written to "support the Child Support Tax Equity Act of 1992." She points out that:

Thirty-one percent of child support goes uncollected each year. This $1.5 billion loss impoverishes many mothers and children * * * Despite the existence of techniques such as liens on property and reports to credit agencies, many of these parents are * * * able to avoid payment. To the extent that these obligors file income tax returns, the Child Support Tax Equity Act provides a potent remedy to force them to pay attention to their obligations.

Ms. Kay Hollestelle, executive director of the Children's Foundation, has written that:

This critically needed legislation promises to be an effective new component to established enforcement tools already available * * * (It provides) a new means to help custodial parents support their children. It would also become a much needed safety net for those custodial parents who cannot benefit from established enforcement tools * * * The tax benefits provided by the (bill) could thus help a segment of our population clearly in need.

In drafting the legislation I consulted with many other national children and child support advocacy groups and I expect that they will also endorse the bill.

CONCLUSION

The legislation I am introducing today uses a new tool to work on the national crisis on unpaid child support. This is a multifaceted crisis and we need as many tools as we can assemble to ensure that our Nation's children receive the financial support that is essential for them to grow to be responsible, productive adults.

The fact that this important legislation is deficit neutral is a bonus. I would be proposing this bill even if it carried a cost to the Government. But, it is drafted so that it does not impose any cost and this makes it not just attractive, but it makes it irresistible.

I look forward to working with the chairman and members of the Finance Committee on this bill. I am delighted to have the support of a broad-base of respected children and child support enforcement organizations.

I ask unanimous consent that an outline of the bill and the text of the bill be printed at this point in the RECORD.

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

S. 2514

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 "Child Support Tax Equity Act of 1992".

SEC. 2. NO EFFECT ON RIGHTS AND LIABILITIES.

Nothing in this Act shall be construed to affect—

(1) the right of an individual or State to receive any child support payment; or

(2) the obligation of an individual to pay child support.

SEC. 3. ALLOWANCE OF BAD DEBT DEDUCTION FOR PARTIALLY UNPAID CHILD SUPPORT PAYMENTS.

(a) IN GENERAL.—Section 166 of the Internal Revenue Code of 1986 (relating to deduction for bad debts) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) CERTAIN UNPAID CHILD SUPPORT PAYMENTS.—

"(1) IN GENERAL.—In the case of any eligible taxpayer who has any applicable child support payments remaining unpaid as of the close of the taxable year—

"(A) subsections (a) and (d) shall not apply to such payments, and

"(B) there shall be allowed as a deduction for such taxable year an amount equal to the amount of such payments.

"(2) PER CHILD LIMITATION ON DEDUCTION.—The aggregate amount allowable as a deduction for any taxable year under paragraph (1) with respect to any child for whom applicable child support payments are required to be paid shall not exceed $10,000.

"(3) ELIGIBLE TAXPAYER.—For purposes of this subsection, the term 'eligible taxpayer' means an individual—

"(A) whose adjusted gross income for the taxable year does not exceed $40,000,

"(B) with respect to whom the amount of applicable child support payments remaining unpaid as of the close of the taxable year is equal to or greater than $500, and

"(C) who meets the identification requirements of paragraph (5).

"(4) APPLICABLE CHILD SUPPORT PAYMENT.—

"(A) IN GENERAL.—The term 'applicable child support payment' means, with respect to any taxable year of the eligible taxpayer—

"(i) any periodic payment of a fixed amount, or

"(ii) any payment of a medical or educational expense, insurance premium, or other similar item,

which is required to be paid to such taxpayer during such taxable year by an individual under a support instrument meeting the requirements of paragraph (8) for the support of any qualifying child of such individual.

"(B) QUALIFYING CHILD.—For purposes of this paragraph, the term 'qualifying child' means a child of an eligible individual with respect to whom a deduction is allowable under section 151 for the taxable year (or would be so allowable but for paragraph (2) or (4) of section 152(e)) or, while eligible for such deduction, was determined to be disabled under subtitles 2 or 16 of chapter 42.

"(C) PAYMENTS MUST BE DELINQUENT FOR AT LEAST ENTIRE YEAR.—Any payment described in subparagraph (A) which is required to be made by an individual to an eligible taxpayer shall not be treated as an applicable unpaid child support payment if at least half of the payments which are required to be paid to the eligible taxpayer during the 12-month period ending on the last day of the taxable year are paid. In the case of the 1st taxable year to which this subsection applies to payments from any individual, the preceding sentence shall be applied by substituting '24-month' for '12-month'.

"(D) COORDINATION WITH AFDC.—The term 'applicable child support payment' shall not include any payment the right to which has been assigned to a State under section 402(a)(26) of the Social Security Act (42 U.S.C. 602(a)(26)).

"(5) IDENTIFICATION REQUIREMENTS.—The requirements of this paragraph are met if the eligible taxpayer includes on the return claiming the deduction under this subsection the name, address, and taxpayer identification number of—

"(A) each child with respect to whom child support payments to which this subsection applies are required to be paid, and

"(B) the individual who was required to make such child support payments.

In the case of a failure to provide the information under subparagraph (B), the preceding sentence shall not apply if the eligible taxpayer certifies that any such information is not known.

"(6) COST-OF-LIVING ADJUSTMENTS.—In the case of any taxable year beginning after 1992, the $10,000 amount under paragraph (2)(A), the $40,000 amount under paragraph (3)(A), and the $500 amount under paragraph (3)(B) shall each be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '1991' for '1989'.

"(7) SUBSEQUENT PAYMENTS.—If any payment with respect to which a deduction was allowed under paragraph (1) is subsequently made, such payment shall be included in gross income of the eligible taxpayer for the taxable year in which paid. This paragraph shall not apply to any amount if an individual has assigned the right to receive such amount to a State (and the State does not pay such amount to such individual).

"(8) SUPPORT INSTRUMENT.—For purposes of this subsection, a support instrument meets the requirements of this paragraph if it is—

"(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

"(B) a written separation agreement, or

"(C) a decree (not described in subparagraph (A)) of a court or administrative agency requiring a parent to make payments for the support or maintenance of 1 or more children of such parent."

(b) DEDUCTION FOR NONITEMIZERS.—Section 62(a) of such Code is amended by adding at the end thereof the following new paragraph:

"(14) UNPAID CHILD SUPPORT PAYMENTS.—The deduction allowed by section 166(f)."

(c) CONFORMING AMENDMENT.—Section 166(d)(2) of such Code is amended by striking

"or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or" and by adding at the end thereof the following new subparagraph:

"(C) a debt which is an applicable child support payment under subsection (f)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4. INCLUSION IN INCOME OF AMOUNT OF UNPAID CHILD SUPPORT PAYMENTS.

(a) IN GENERAL.—Section 108 of the Internal Revenue Code of 1986 (relating to discharge of indebtedness income) is amended by adding at the end thereof the following new subsection:

"(h) UNPAID CHILD SUPPORT PAYMENTS.—

"(1) IN GENERAL.—For purposes of this chapter, any taxable unpaid child support payments of a taxpayer for any taxable year shall be treated as amounts includible in gross income of the taxpayer for the taxable year by reason of the discharge of indebtedness of the taxpayer.

"(2) TAXABLE UNPAID CHILD SUPPORT PAYMENTS.—For purposes of this subsection, the term 'taxable unpaid child support payments' means payments—

"(A) which were applicable child support payments which the taxpayer was required to pay under a support instrument for the support of a child of the taxpayer, and

"(B) with respect to which the notice requirements of paragraph (3) are met.

"(3) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—During January of the second calendar year following a calendar year in which there begins a taxable year for which a deduction allowed under section 166(f) was claimed, the eligible taxpayer shall send a notice (in such form as the Secretary may prescribe) to the individual who failed to make payments which contains—

"(i) the amount of the applicable child support payments for such taxable year, and

"(ii) notice that the individual is required to include such amount in gross income for the taxable year beginning in the preceding calendar year.

"(B) NOTICE BY SECRETARY.—If notice cannot be provided under subparagraph (A) because the address is not known to the eligible taxpayer, the Secretary shall send such notice if the address is available to the Secretary.

"(C) ADDRESS UNKNOWN.—If notice cannot be provided under subparagraph (A) or (B) because there is no known address, no income shall be included in gross income for any taxable year beginning before the calendar year preceding the calendar year in which such notice may be sent.

"(4) SUBSEQUENT PAYMENTS.—If any payment required to be included in gross income under paragraph (1) is subsequently made, the amount of such payment shall be allowed as a deduction for the taxable year in which such payment is made.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'applicable child support payments' and 'eligible taxpayer' have the meanings given such terms by section 166(f).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

OUTLINE: CHILD SUPPORT TAX INCENTIVES

Bill uses tax law regarding bad debt deductions and discharge of indebtedness to help parents who cannot collect child support and to prevent windfall for parents who do not pay child support.

BAD DEBT DEDUCTION

Clarifies that taxpayers, principally mothers, who are not paid child support owed to them to take a bad debt deduction for the amount of the child support that is not paid.

Deduction is allowed for taxpayers who do not itemize their deductions. Above the line deduction.

Bad debt deduction is allowable up to $5,000 in unpaid child support per child per year. Threshold is indexed for inflation.

Deduction is allowable only if taxpayer's adjusted gross income does not exceed $50,000 per year. Threshold is indexed.

Deduction is allowable for any periodic payment of a fixed amount that is required to be paid.

Requirement for payment to be made must be found in a legally enforceable agreement, decree or order. Encourages taxpayer to obtain enforceable child support right.

No deduction is allowed for first year in which payments are not made. Encourages taxpayers who owe or are owed child support to work out initial problems with payments.

In subsequent years, the deduction is allowable only if at least $500 in child support payments have not been paid. Once threshold is exceeded, full amount of non-payment is deductible.

The taxpayer claiming the deduction must identify the children with respect to whom child support payments are required to be made and, to the extent possible, the taxpayer who is required to make these payments. Same standard as in welfare reform law.

The deduction is allowed for child support payments to any child for whom an exemption for a dependent is allowable.

If the child support payments for which a deduction has been taken subsequently are paid the mother must include payments as taxable income in the year in which they are paid.

Mother is not barred from seeking to collect the child support that is owed by father. Value of deduction is only 15% or 28% of value of payments, so mother has incentive to seek collection of full amount rather than simply taking deduction.

DISCHARGE OF INDEBTEDNESS

Requires taxpayers, principally fathers, to pay tax on the amount of any child support payments they do not make as a discharge of such indebtedness. Prevents windfall for fathers who fail to pay child support.

When mother claims bad debt deduction, father is notified by the mother or the I.R.S. of the amount of the unpaid child support payments and that he must include this amount in his gross income on his next tax return.

If the father subsequently pays the child support that is due, he may claim a deduction for such payments in the year in which they are paid.

Minimal I.R.S. burden involved. Taxpayer claiming deduction must have legally enforceable order and record of non-payment. Taxpayer who allegedly has failed to make payments may dispute obligation to pay or provide records of payments. A simple and objective process. Current penalties for fraudulent tax claims prevents abuse.

BUDGET IMPACT OF LEGISLATION

Joint Tax Committee finds that tax provisions of the bill raise $30 million in revenue over a five year period. This is true because fathers, who pay tax, are in higher tax brackets than mothers, who claim deduction.

POLICY ISSUES WITH LEGISLATION

A mother who cannot collect a child support debt should be treated the same for tax purposes as a businessman who cannot collect a debt. This is simple equity.

A father who refuses to pay child support payment debt should be treated the same for tax purposes as a borrower who is discharged from a debt by the lender. This is simple equity.

Legislation gives mothers incentive to obtain legal order requiring payments to be made and gives fathers incentive to make payment to mother rather than to I.R.S.

Legislation helps children of families where no child support payments are made. It penalizes fathers who fail to make required child support payments.

Discharge of indebtedness for fathers pays for bad debt deduction for mothers and fee waivers.

Mr. REID. Mr. President, I rise today to join Senator BUMPERS in offering a solution to a national dilemma. It is not a new one, however. The legislative proposal we will introduce today is a new approach to a problem, an approach that I believe is fair and an approach that will have positive effects nationwide.

The dilemma about which I speak is a problem of many single mothers who have been awarded child support payments but never see a penny of that child support payment. It is a problem of which I have been aware for many years.

Prior to coming to this body, Mr. President, I was an attorney, and a part of my practice consisted of divorce cases. One of the things that I really liked getting involved in was divorce cases. Not a lot of lawyers like to, but I did. The reason that I did, I received great satisfaction out of getting things for women who deserved it.

I found in my law practice that men with children are not very responsible, and statistically, as we will talk about in a minute, that is true. As a result of my experience in courtrooms, I believe this legislation is even more meaningful. The statistics relating to nonpayment of child support show an ever-increasing problem. It is worse than when I practiced law.

According to the 1989 Bureau of Census data, there are approximately 10 million mothers who live with children under 21 years of age where there is no father present. Of these mothers, almost 60 percent have been awarded child support payments, and, according to the Bureau, only one-half of these mothers ever see the child support that is due them. We will talk about these statistics a little more.

The State of Nevada is not an exception to this problem. The Office of Child Support Enforcement within the Department of Health and Human Services here in Washington keeps tabulations for each State on child support paid to mothers who have registered for some form of Federal assistance. It is my understanding that this data represents about 75 percent of the total number of mothers that are due some form of child support. According to the records they have kept through 1989, less than 16 percent of the child support due to Nevada mothers is ever

collected—16 percent. There is no doubt that this is a serious problem.

It is widely accepted that divorced or separated mothers earn less than the father after the separation. The courts determine the amount of child support based on this fact. Yet, according to the statistics I have cited, it will be a safe guess that many of these mothers are forced into situations where they must work two jobs to pay the bills of their family because they do not receive the child support payments the courts have ordered to be paid. It is no wonder that the poverty rate for children is skyrocketing and the educational qualifications of our youth is ever declining.

Mr. President, I read a book written last year by a woman by the name of Hewlett. It is a book called "When the Bow Breaks." It is a depressing book but glaringly alarming to me, as I think it is to every Member of Congress. Let me give you some statistics out of this book "When the Bow Breaks."

Two and a quarter million more children are poor today than 10 years ago. What are the causes of poverty? Drop in wages, divorce rates, and child abandonment. We think of child abandonment as where a mother and father just leave the little kids in a car and take-off, or leave from a home and go someplace, or leave the kids with the grandparents and take off. But that is not, in fact, what it is. Child abandonment in this book is when a father abandons the children, and that is what happens a lot of times.

Mr. President, the rate of divorce has tripled between 1960 and 1982. After divorce, ex-wives' hiring standards drop by 30 percent. After divorce, men's incomes increase 8 percent; a woman's drops 30 percent. One-half of all divorced fathers after the divorce fail to see their children. Let me repeat that. After divorce, 50 percent of the fathers never see their children. Two-thirds of these fathers fail to pay child support.

Between 1978 and 1987, Government spending on children dropped 4 percent when it should have been increasing with some of the statistics I am giving. Today, 50 percent of preschool children have working mothers, and it goes without saying the mothers have to work, single mothers, and, as I indicated earlier, some two jobs.

In 1990, 12 percent of children lived alone with their mothers. In 1988, 24 percent of children—it has doubled in that short period of time—lived alone with their mothers. Forty-one percent of divorced men, when the divorce takes place, agree to pay child support. Fifty-one percent of mothers entitled to child support get child support, 25 percent who are entitled to child support get partial support, and 23 percent of those entitled to child support get nothing.

It is interesting because these same men, Mr. President, keep their car payments up. Seventy-five percent of them keep their car payments up. The number of women holding two or more jobs has gone up 500 percent between 1970 and 1990. Fifty percent of all divorced fathers fail to see their children. That goes without saying, because we have already established that 50 percent of them abandon them basically.

Full-time workers that are women only earn 71 percent of what men earn doing the same kind of work. The statistics go on and on and on.

Mr. President, none of the statistics are good. This legislation that we are talking about here today, Senator BUMPERS and I, is being introduced today because it will create some tax fairness regarding the situation about which I have spoken. It will create an incentive for the payment of court-ordered child support. We need an incentive.

I have memories of the way that men try to get out of paying child support that is really unbelievable. Had I not been there representing the women I would not believe it. We need more incentive and maybe the Tax Code will do that.

This legislation is really very simple. It provides the same tax status to single parents that exists for businesses when they are owed money but cannot collect it. If a business cannot collect money that is owed to them, they are allowed to write that debt off of their taxes as a bad debt. In addition, when the business writes off this bad debt, the borrower who has defaulted must pay taxes on the amount that is written off.

That is, in effect, what we are doing here.

It is only fair that single parents in the same situation be allowed the same tax advantage or penalty. In other words, should a single parent—in most cases a single mother—who has custody of a dependent child not receive the child support that is due to her, she should be able to take a tax deduction for the uncollected portion of the amount she is owed.

On the other hand, should the other single parent—in most cases the father—not pay the child support he has been ordered to pay, he should have to pay tax on the amount unpaid.

Mr. President, that is exactly what this legislation does.

Not only is this legislation a good idea, it will raise Federal revenues. As I mentioned above, fathers earn more after a separation than mothers—30 percent more. The amount that fathers will be taxed on what they do not pay far outweighs the amount that mothers will be able to deduct. The Joint Tax Committee has estimated that the difference will provide an additional $30 million over 5 years for this Government.

This legislation makes good sense, good common sense. The tax fairness issue is obvious, but, in addition, it will provide real incentives for the payment of child support that continues to go unpaid in the State of Nevada, the State of Florida, the State of Louisiana, the State of Nebraska, and the State of Illinois. Wherever it is, people simply do not pay that.

The tax fairness is obvious, as I have indicated. I urge my colleagues to join with us in this legislation.

I yield the floor.

Mr. DURENBERGER. Mr. President, I am pleased to join with my colleague, the senior Senator from Arkansas, in the introduction of the Child Support Tax Equity Act of 1992. I commend him, not only for his initiative in addressing the issue of delinquency in child support payments, but also for his innovative approach to ameliorating this widespread problem.

The Child Support Tax Equity Act makes two important changes in the Tax Code which will work to directly address child support delinquency. First, the proposal would provide those taxpayers owed child support funds with the opportunity to take an above-the-line tax deduction for the delinquent debt. Within certain parameters, this is the same treatment which is available to businesses which are unable to collect moneys owed to them. While it is not as valuable as the delinquent payment itself, the deduction can be a significant aid to the expense of raising children.

The rationale for permitting a deduction for delinquencies is that those owed child support, typically mothers, have been promised by the legal system that they will receive support. When they are unable to collect on this legally enforceable debt, they ought to be entitled to at least the same treatment as businesses so that they can more easily provide for their children.

The second change that would be made by the Child Support Tax Equity Act is that delinquent payers of child support, in most cases it is the fathers, would be treated in the same way as those whose business debts are forgiven. Under current law, someone who benefits from the discharge of indebtedness is liable for taxes on the value of this de facto income. Abusers of their child support obligations will now have a tax liability against the value of their delinquency.

Of course, Mr. President, this proposal will not solve all of the problems facing mothers who rely on child support for raising their children, but it can surely help. In examining this proposal, I was pleased to discover that it can also help to reduce the deficit. Because fathers owing child support are usually in a higher tax bracket than the mothers who can claim the deduction, the Child Support Tax Equity Act is expected to raise over $30 million over the next 6 years which can be used for deficit reduction. The potential tax

revenues from this proposal will, of course, be reduced if outstanding child support payments are brought up to date. This possibility would delight me, Mr. President, because it would mean that the bill is achieving its goal of reducing the problem of child support delinquencies.

Mr. President, I was dismayed to learn the current size of this problem from the Office of Child Support Enforcement at the Department of Health and Human Services. In 1989 alone, in my State of Minnesota, there were over $100 million in outstanding child support obligations. Even though my State had the third best experience with collecting outstanding obligations that year, with a 74.5-percent success rate, over $25 million went unrecovered. For the women owed child support in 1989, almost 20 percent of their income is attributable to child support payments. In spite of the importance of this source of income, nearly 25 percent of the women owed child support were unable to collect what they were legally entitled to receive from the absent parent.

This money is not owed just to mothers, it is owed to children. It is a disgrace, Mr. President, that this delinquency is so widespread. While the Child Support Tax Equity Act is not a guaranteed solution to the problem, it is a major step forward on behalf of the children of this Nation. I urge my colleagues to join Senator BUMPERS and me in supporting this effort.

By Mr. DECONCINI (for himself, Mr. GRAHAM, Mr. AKAKA, and Mr. DASCHLE):

S. 2515. A bill to authorize the establishment of job training programs for unemployed veterans and persons who have been recently separated from the Armed Forces, to pay certain assistance and benefits to employers of such veterans and persons, such veterans, and such persons to defray certain costs relating to the provision of such training, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' EMPLOYMENT AND TRAINING ACT

Mr. DECONCINI. Mr. President, I rise today to introduce very important legislation to provide employment assistance to hundreds of thousands of currently unemployed veterans and several hundred thousand active duty military personnel who will be voluntarily or involuntarily separated in the next few months. I am very pleased that Senators GRAHAM, AKAKA, and DASCHLE have joined me as cosponsors.

Mr. President, the number of Americans who are out of work has steadily grown over the past year. Over 8.4 million Americans, including some 917,000 veterans, are currently unemployed. To make matters worse, another 400,000 military personnel will be discharged from our Armed Forces over the next 5 years.

Many of the soon-to-be-separated men and women entered the Armed Forces because they were promised a satisfying full-length career. This promise is now broken, and many careers will be cut short through no fault of the individuals involved. As a matter of conscience, we owe these men and women help in their transition from military to civilian life.

The bill we are introducing today, the Veterans Employment and Training Act of 1992, is a revised and expanded version of the emergency Vietnam veterans job training bill of 1983, later known as the veterans job training bill. By providing incentives to employers to hire and train veterans in fields leading to stable, long-term employment, this bill will help recently discharged veterans, those veterans from earlier eras who have been unemployed for longer periods of time, and homeless veterans.

This bill would authorize a 5-year employment and training program. Employers who hire and train veterans under this act will be eligible for payments of up to $5,000 per year to defray the costs of training. Veterans participating in an approved job training program, including apprenticeship programs, may receive up to $1,500 for work-related expenses such as special clothing, tools, bus or car fare, and child care.

Mr. President, more than 2 million veterans are disabled. In many cases, unemployed disabled veterans could work if the worksite were adapted to their special needs or if specialized tools or equipment were provided. My bill therefore includes a special incentive of up to $3,000 for employers hiring disabled veterans for the purpose of worksite modification.

An estimated one-third of all homeless single men are veterans, and 80 to 85 percent of homeless veterans are unemployed.

On any given night, a deplorable 110,000 to 250,000 veterans are homeless. To address the employment problems of these veterans, I have included $5 million to establish pilot projects to provide employment services—including counseling and development of job placement skills—to these veterans.

The bill we offer today is the product of many months of work and incorporates suggestions from the Department of Veterans Affairs and Department of Labor, several veteran service organizations, and both the majority and minority professional staffs of the Senate Committee on Veterans Affairs. Discussions were also held with representatives of the National Coalition for the Homeless and local-level State veteran unemployment services representatives.

I am very appreciative of their contributions to date and once again express my desire to keep each of them involved in the process as this bill moves through the legislative process. The payment mechanisms and administrative details of this bill have been roughed in, but will require fine-tuning to assure the most efficient and effective use possible of funds.

Mr. President, this bill is not a perfect bill. It addresses some but not all of the glitches in the 1983 Emergency Veterans Job Training Act. EVJTA was a very good program which, according to a 1985 evaluation, had a significantly positive impact on participating veterans' employment rates and earnings levels. It was, however, handicapped at two points:

Fiscal policy differences between Congress and the administration; and

The need for interagency coordination between the Veterans' Administration and the Department of Labor.

The EVJTA was funded erratically. In 1984, $150 million was appropriated for the EVJTA. In 1985, it received no additional funding whatsoever. In both 1986 and 1987, we had to fight for the funds needed to sustain it to completion. This uncertain financial support raised questions about the program's viability right from the start.

The fragmentation of program operations between agencies required ongoing, often intensive intraagency and interagency coordination. This tended to divert staff, time, and fiscal resources from other tasks required for program implementation. This bill consolidates activities as much as possible. The Department of Labor will have primary responsibility for implementing the hands-on provisions of this bill. The VA will be responsible for disbursing payments to veterans and employers under this act. Further, I have provided a set-aside to help support new resources needed to implement and administer this program, particularly at local levels.

Mr. President, there is a simple means to assure greater continuity in fiscal support, while also reducing the administrative burden and costs. Unfortunately, this route appears closed for the moment. Employer tax credits would solve both problems by eliminating the need for annual appropriations relative to employers and also any need for employer payments. Unfortunately, the budget summit firewalls and the March 20 deadline for congressional passage of the economic recovery tax bill ruled out this approach at this time. Should another revenue vehicle reemerge during this session, and if reasonable offsets could be located, I would strongly support a tax credit to employers in place of the quarterly payments proposed in my bill.

The Veterans Employment and Training Act would attempt to maximize appropriate matches of veterans with employers by requiring the Department of Veterans Affairs and the Department of Labor to develop an adequate referral process. Close mon-

itoring of the program will also be encouraged by requiring submission of annual status reports to the congressional committees. Last, both the Department of Veterans Affairs and Department of Labor will be encouraged to train their local representatives in the coordination activities necessary for the success of this program.

Mr. President, I fully recognize that veterans represent only one part of our Nation's overall unemployment problem. It is, however, my opinion that we owe special consideration to those who have served in our Armed Forces, especially those who will forever bear the scars of that great personal sacrifice. There is another reason why we should provide the resources and programs necessary to get these discharged men and women on their feet—it is cost effective. Veterans as a group have very high potential for benefiting from a program of job training. Military experience has provided them with discipline; they have drive and energy; and they are eager to make their own way. All they need is a boost to get them going. And that is what I am proposing.

In conclusion, I again thank my distinguished colleagues on the Committee on Veterans' Affairs who have joined me as original cosponsors of the Veterans Employment and Training Act of 1992 and strongly urge my colleagues in the Senate to join us in support of this important legislation for America's veterans.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD immediately following the conclusion of my remarks, and further ask unanimous consent that a summary of the bill's provisions be printed in the RECORD immediately following the text of the bill.

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

S. 2515

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 "Veterans' Employment and Training Act of 1992".

SEC. 2. PURPOSE.

The purpose of this Act is to address the problem of severe and often continuing unemployment among veterans by providing incentives to certain employers to permit such employers to defray the costs of training veterans (including veterans who have been recently separated from an Armed Force as a result of the current reduction in the size of the Armed Forces) and to encourage such employers to employ and train such veterans in stable and permanent positions of employment for which significant training is required.

SEC. 3. DEFINITIONS.

In this Act:

(1) The term "Secretary" means the Secretary of Veterans Affairs.

(2) The terms "veteran", "Armed Forces", "compensation", "service-connected", "State", and "active military, naval, or air service" have the meanings given such terms in paragraphs (2), (10), (13), (16), (20), and (24) of section 101 of title 38, United States Code, respectively.

SEC. 4. AUTHORITY TO CARRY OUT PROGRAMS.

(a) IN GENERAL.—In accordance with the provisions of this Act, the Secretary and the Secretary of Labor shall assist eligible veterans in obtaining employment with eligible employers in permanent and stable positions of employment that require significant training. Assistance shall be provided under this Act through—

(1) the payment of training assistance to employers who employ and train eligible veterans in such positions to assist such employers in defraying the costs of such training; and

(2) the provision to such veterans of training benefits and appropriate counseling to assist such veterans in receiving such training.

(b) ASSISTANCE IN CARRYING OUT PROGRAM.—The Secretary of Labor shall carry out that Secretary's responsibilities under this Act through the Assistant Secretary of Labor for Veterans' Employment and Training referred to in section 4102A of title 38, United States Code.

SEC. 5. ELIGIBILITY OF VETERANS FOR PARTICIPATION IN JOB TRAINING PROGRAMS.

(a) IN GENERAL.—A veteran may participate in a job training program under this Act if—

(1) the veteran is eligible for such participation under subsection (b);

(2) the veteran submits to the Secretary of Labor an application for a certificate of eligibility for participation in the program under subsection (c); and

(3) the Secretary of Labor issues such a certificate to the veteran under subsection (d).

(b) ELIGIBILITY.—(1) A veteran is eligible to participate in a job training program if—

(A) the veteran—

(i) is unemployed at the time the veteran submits an application for a certificate of eligibility for participation under subsection (c); and

(ii) has been unemployed for at least 10 of the 15 weeks immediately preceding the date of the veteran's commencement of participation in the program; or

(B) the veteran was separated from active military, naval, or air service not more than 10 weeks before the commencement of such participation.

(2) For purposes of paragraph (1), the term "veteran" means a veteran who—

(A) performed service in the active military, naval, or air service for a period of more than 90 days; or

(B) was discharged or released therefrom for a service-connected disability.

(3) For the purposes of paragraph (1), a veteran shall be considered to be unemployed during any period that the veteran is not employed and wants and is available for employment.

(c) APPLICATION FOR CERTIFICATE OF ELIGIBILITY.—(1) A veteran who desires to participate in a job training program under this Act shall submit to the Secretary of Labor an application for a certificate of eligibility for participation in such a program. Such an application shall—

(A) include a statement by the veteran that the veteran meets the criteria for eligibility referred to in subsection (b); and

(B) contain such other information as the Secretary of Labor shall prescribe.

(2) The Secretary of Labor shall prescribe the form of an application under this subsection.

(d) CERTIFICATE OF ELIGIBILITY.—(1) Subject to paragraph (2), the Secretary of Labor shall issue to each veteran who meets the eligibility requirements referred to in subsection (b) and who submits an application for a certificate of eligibility under subsection (c) a certificate of eligibility for participation in a job training program under this Act.

(2) The Secretary of Labor may withhold the issuance of a certificate of eligibility under this subsection to any veteran if the Secretary of Labor determines that it is necessary to limit the number of veterans who participate in job training programs under this Act by reason of a lack of funds to carry out such programs.

(e) APPEAL OF DENIAL OF CERTIFICATE.—The Secretary of Labor shall permit each veteran who is not issued a certificate of eligibility under subsection (d) (other than a veteran who is not issued such a certificate by reason of paragraph (2) of that subsection) to challenge in a hearing before the Secretary of Labor the failure of the Secretary of Labor to issue the certificate. The Secretary of Labor shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

(f) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—A veteran who is issued a certificate of eligibility for participation in a job training program under this section shall commence participation in such a program not more than 90 days after the date of the issuance of the certificate. The date on which a certificate is furnished to a veteran shall be stated on the certificate.

(g) RENEWAL OF CERTIFICATE.—A veteran may apply for a renewal of a certificate of eligibility for participation in a job training program (including a renewal of a renewed certificate). The application for the renewal of any such certificate shall be treated as an initial application for such a certificate under this section.

SEC. 6. EMPLOYER JOB TRAINING PROGRAMS.

(a) IN GENERAL.—Job training shall be provided to veterans under this Act by eligible employers through job training programs that meet the requirements of this section.

(b) ELIGIBLE EMPLOYERS.—An employer is eligible to provide job training to veterans through a job training program under this Act if, as determined by the Secretary of Labor, the employer intends to provide such training in a field of employment providing the reasonable probability of stable, long-term employment.

(c) REQUIREMENTS OF JOB TRAINING PROGRAMS.—Except as provided in subsection (d) and subject to subsections (f) and (g), in carrying out a job training program under this Act, an employer shall agree as follows:

(1) To identify a stable and permanent position of employment of the employer—

(A) in which there is a vacancy at the time of the identification;

(B) that requires an employee with significant training; and

(C) for which the employer is willing to provide such training.

(2) To devise a training program of such period and having such content, training materials, and instructors as are necessary to provide an employee with such training.

(3) To employ and train in the position on a full-time basis a veteran who—

(A) has been issued a certificate of eligibility for participation in such a program under section 5(d); and

(B) is not already qualified for employment in that position by reason of prior training or experience.

(4) To provide the veteran with such training for a period that is not longer than the period customarily required by similar employers in the community of the employer, if any, to provide similar training to the employees of such employers.

(5) During such employment and training, to provide the veteran with compensation and other benefits that are similar to the compensation and other benefits provided by the employer to non-veteran employees during such training.

(6) If practicable, to employ the veteran in that position upon the veteran's completion of the program.

(d) RESTRICTIONS ON EMPLOYMENT POSITIONS.—An employer may not employ a veteran in a job training program under this Act if—

(1) the training is for a position of employment—

(A) that consists of seasonal, intermittent, or temporary employment;

(B) for which the primary pay is commissions;

(C) that includes political or religious activities; or

(D) in any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service or the Postal Rate Commission);

(2) the training under the program will not be carried out in the United States; or

(3) the employment of the veteran during the training—

(A) will result in the displacement (including any reduction in hours of non-overtime work, wages, or employment benefits or other partial displacement) of employees currently employed by the employer; or

(B) will be in a position of employment—

(i) while any other employee of the employer is currently laid off from the position or a substantially similar position; or

(ii) for which there is a vacancy as a result of the employer's reduction of the workforce of the employer (including the termination of any regular employee) for the purpose of employing the veteran under the program.

(e) JOB TRAINING THROUGH EDUCATION.—An eligible employer may provide job training to veterans under this Act, in whole or in part, by permitting such veterans to pursue or enroll in programs of education that—

(1) are offered by educational institutions that meet the requirements of chapter 36 of title 38, United States Code; and

(2) do not violate any provision of that chapter.

(f) LIMITATIONS ON TRAINING PERIODS.—(1) Except as provided in paragraph (2), an employer shall provide a period of training under a job training program under this Act of not less than six months or more than two years.

(2) An employer may provide a period of training under a job training program of three months to six months if the Secretary of Labor determines that a program of training of that period will satisfy the purposes of a job training program under this Act.

(g) ADDITIONAL REQUIREMENTS.—The Secretary of Labor may prescribe such additional requirements with respect to job training programs under this section as the Secretary of Labor determines are necessary to carry out the purposes of this Act.

SEC. 7. APPROVAL OF EMPLOYER JOB TRAINING PROGRAMS.

(a) IN GENERAL.—The Secretary of Labor shall approve each job training program established by an employer under this Act. The Secretary of Labor shall approve such programs in accordance with this section.

(b) SUBMITTAL OF APPLICATION FOR APPROVAL.—An employer who intends to carry out a job training program under this Act shall submit to the Secretary of Labor an application for approval of that program. The application for approval shall contain the following:

(1) A statement that the employer is an eligible employer under section 6(b).

(2) A statement that the proposed job training program of the employer meets the requirements for such programs established in section 6, together with such documentation to support that statement as the Secretary of Labor may prescribe.

(3) A statement of—

(A) the total number of hours of participation required of a veteran under the program;

(B) the number of weeks that the veteran will participate in the program; and

(C) the starting wages (and other compensation) of the veteran under the program.

(4) A description of—

(A) the training objective of the program; and

(B) the training content of the program (including the intent, if any, of the employer to permit the veteran to pursue or enroll in a program of education under section 6(e)).

(5) In the event that training under the program will include a veteran's pursuit of or enrollment in a program of education under section 6(e), a statement of the manner in which such training will include the program of education.

(c) APPROVAL OF THE SECRETARY OF LABOR.—The Secretary of Labor shall approve a job training program of an employer under this section if the Secretary of Labor determines from the information contained in the application for approval submitted by the employer under subsection (b) that the program meets the requirements for such a program under this Act.

(d) APPRENTICESHIP PROGRAMS.—(1) Except as provided in paragraph (2), a program of apprenticeship or other on-job training that meets the requirements of section 3687 of title 38, United States Code, shall be considered to be a job training program that is approved by the Secretary of Labor under this section.

(2) A program of apprenticeship or other on-job training shall not be considered to be a job training program that is approved by the Secretary of Labor under this subsection if it provides for apprenticeship or training for any position of employment referred to in section 6(d)(1).

(e) DISCONTINUATION OF APPROVAL.—(1) The Secretary of Labor may discontinue approval of any job training program previously approved under subsection (c) if the Secretary of Labor determines that—

(A) the program no longer meets the requirements of an approved program under this section; or

(B) the rate of the successful completion of the program by participating veterans is unacceptably low (when compared with rates of such completion for other such programs) by reason of deficiencies in the program.

(2) In making the determination referred to in paragraph (1)(B), the Secretary of Labor shall take into account any information that the Secretary of Labor considers to be relevant, including—

(A) the information collected in the quarterly assessment referred to in section 17(b) relating to—

(i) the number of veterans who are provided with job training under this Act;

(ii) the number of veterans who receive counseling in connection with job training provided under this Act;

(iii) the number of veterans who complete such training; and

(iv) in the case of veterans who do not complete such training, the reasons for such lack of completion; and

(B) data compiled through employer compliance surveys.

(3) A job training program that is disapproved by the Secretary of Labor under paragraph (1) shall not be an approved job training program for the purposes of this section.

(4)(A) Upon disapproving a job training program under this subsection, the Secretary of Labor shall notify the employer carrying out the program and any veterans participating in the program of that disapproval. The notice shall contain—

(i) a statement of the reasons for that Secretary's disapproval of the program; and

(ii) a statement that the employer and such veterans are entitled to challenge the disapproval in a hearing before the Secretary of Labor.

(B) Any notice under this paragraph shall be by certified or registered letter, return receipt requested.

(5)(A) The Secretary of Labor may reapprove any program that the Secretary of Labor has disapproved under paragraph (1) if the Secretary of Labor determines that the employer has taken appropriate remedial actions with respect to those matters upon which the Secretary of Labor based the disapproval.

(B) A program that is reapproved under this paragraph shall be considered to be a job training program that is approved by the Secretary of Labor for the purposes of this section.

SEC. 8. PAYMENTS OF TRAINING ASSISTANCE AND OTHER ASSISTANCE TO EMPLOYERS.

(a) IN GENERAL.—The Secretary shall pay training assistance to employers who provide job training to veterans in job training programs under this Act.

(b) AMOUNT OF PAYMENT.—(1) Subject to paragraph (2), for each payment period referred to in subsection (c) during which an employer provides job training to a veteran under this Act, the Secretary shall pay training assistance to the employer of the veteran on behalf of the veteran in an amount equal to 50 percent of the product of—

(A) the rate of the starting hourly wage (excluding overtime or premium pay) of the veteran under the program; and

(B) the number of hours worked by the veteran during the period.

(2) The amount paid to an employer on behalf of a veteran in any year under paragraph (1) may not exceed $5,000.

(c) PAYMENT PERIOD.—(1) Except as provided in paragraph (2), the Secretary shall pay training assistance to employers under this section on a quarterly basis.

(2) The Secretary may pay training assistance to an employer on a monthly basis if the Secretary determines (pursuant to regulations prescribed by the Secretary) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

(d) APPROVAL OF SECRETARY OF LABOR.—The Secretary shall pay training assistance to an employer for a quarterly or monthly period (as the case may be) after—

(1) the Secretary of Labor receives the certifications with respect to that period referred to in subsection (e);

(2) the Secretary of Labor approves of the payment of such assistance for that period based upon such certifications; and

(3) the Secretary of Labor transmits notice of such approval to the Secretary.

(e) CERTIFICATIONS RELATING TO PAYMENT.—(1) Subject to paragraph (2), with respect to each period for which an employer seeks payment of training assistance on behalf of a veteran under this section, the following shall be submitted to the Secretary of Labor:

(A) By the employer, a certification—

(i) that the employer provided the veteran with training during the period;

(ii) of the number of hours worked by the veteran in the program during the period; and

(iii) that the progress of the veteran in the training program during the period was satisfactory.

(B) By the veteran, a certification that the veteran was provided with job training by the employer in a job training program on a full-time basis during the period.

(2) The first certification submitted to the Secretary of Labor by an employer under paragraph (1)(A) and by a veteran under paragraph (1)(B) shall include—

(1) the date on which the veteran commenced participation in the job training program; and

(2) the rate of the starting hourly wage of the veteran under the program.

(f) PAYMENT OF ASSISTANCE TO ACCOMMODATE DISABLED VETERANS.—(1) The Secretary shall pay accommodation assistance to employers who provide job training to disabled veterans under this Act to permit such employers to make modifications of the facilities or equipment of such employers on behalf of such veterans to facilitate the training and employment of such veterans.

(2) To be eligible for the payment of accommodation assistance for modifications of facilities or equipment made on behalf of a disabled veteran under this subsection, an employer shall submit to the Secretary of Labor—

(A) prior to the commencement of such modifications, a detailed proposal relating to such modifications, including the estimated cost of such modifications; and

(B) upon the completion of such modifications, any documentation that the Secretary may require that indicates (i) that the employer has completed such modifications, and (ii) the final cost of such modifications.

(3)(A) The Secretary of Labor shall—

(i) approve each proposal for modifications submitted to the Secretary of Labor under paragraph (2)(A);

(ii) approve the cost of each modification indicated in the documentation submitted to the Secretary of Labor under paragraph (2)(B); and

(iii) transmit a notice of each such approval to the Secretary.

(B) The Secretary of Labor shall approve the cost of a modification of facilities or equipment under paragraph (A)(ii) only if the Secretary of Labor determines that the cost of the modification is reasonable.

(4) The Secretary shall pay as accommodation assistance under this subsection the cost of any modification approved by the Secretary of Labor under paragraph (3)(A)(ii). The total amount of accommodation assistance payable to an employer for modifications made by the employer on behalf of a disabled veteran under this subsection may not exceed $3,000.

(5) Each employer paid accommodation assistance under this subsection shall permit the Secretary of Labor reasonable access to the facilities and equipment of the employer to enable the Secretary of Labor to ensure that the employer has made the modifications of such facilities and equipment in accordance with the proposals and documentation submitted to the Secretary of Labor by the employer.

(6) For the purposes of this subsection, modifications of facilities or equipment on behalf of a disabled veteran shall include any improvement, alteration, or purchase of facilities or equipment that is necessary to make the facilities or equipment readily accessible to, and usable by, a disabled veteran.

(g) OVERPAYMENT.—(1) A payment of training assistance (other than accommodation assistance under subsection (f)) to an employer on behalf of a veteran for a quarterly or monthly period, as the case may be, shall be an overpayment of assistance for that period if the Secretary or the Secretary of Labor determines that—

(A) during that period, the employer—

(i) has failed to comply in material respect with the requirements of this Act; and

(ii) is responsible for such failure;

(B) the payment is based upon the willful submittal by the employer to the Secretary of Labor in a certification under subsection (d)(1)(A) of material information that the employer knows to be false;

(C) the payment is based upon the willful or negligent submittal by the veteran to the employer of any material information that is false;

(D) the payment is based upon the willful or negligent submittal by the veteran to the Secretary of Labor in an application for a certificate of eligibility for participation in the program under section 5(b) of any material information that is false; or

(E) the payment is based upon the willful or negligent submittal by the veteran to the Secretary of Labor in a certification under subsection (d)(1)(B) of any material information that is false.

(2)(A) An employer shall be liable to the United States for an overpayment referred to in subparagraph (A) or (B) of paragraph (1).

(B) A veteran shall be liable to the United States for an overpayment referred to in subparagraph (C), (D), or (E) of that paragraph.

(h) RECOVERY OF OVERPAYMENT.—(1) Except as provided in paragraph (2), the Secretary may recover an overpayment under this section by any method that is provided by law for the recovery of amounts owing to the Federal Government. Any overpayment recovered shall be credited to the account relating to the funds available to carry out this Act. If there is no such account, any overpayment recovered shall be covered into the Treasury.

(2) The Secretary may waive the recovery of an overpayment under this section, in whole or in part, in accordance with the provisions of section 5302 of title 38, United States Code.

SEC. 9. TRAINING BENEFITS FOR VETERANS.

(a) IN GENERAL.—The Secretary shall pay training benefits to veterans who participate in job training programs under this Act. The purpose of such training benefits is to assist such veterans in defraying the cost of work-related expenses. The total amount of training benefits payable to a veteran by the Secretary under this section may not exceed $1,500.

(b) APPROVAL OF SECRETARY OF LABOR.—A veteran shall be entitled to the payment of a training benefit for work-related expenses incurred by the veteran if—

(1) the veteran submits to the Secretary of Labor an application for payment (in such form and including such documentation as the Secretary of Labor may require) stating the amount of any such expenses incurred by the veteran as a result of the veteran's participation in a job training program under this Act; and

(2) the Secretary of Labor approves the payment of a training benefit with respect to such expenses.

(c) ADMINISTRATION OF PAYMENT.—The Secretary of Labor, in consultation with the Secretary, shall prescribe the manner of the payment of training benefits under this section, including the period and frequency of the payment of benefits to veterans and the means of ensuring the prompt payment of benefits to veterans by the Secretary.

(d) OVERPAYMENT.—(1) A veteran shall not be entitled to the payment of a training benefit under this section if the veteran terminates participation in a job training program prior to the scheduled date of the completion of the program by the veteran.

(2) In the event that the Secretary determines that a veteran has been paid a training benefit to which the veteran was not entitled, the amount of the benefit paid to the veteran to which the veteran was not so entitled shall constitute an overpayment of the benefit and a liability of the veteran to the United States.

(e) RECOVERY OF OVERPAYMENT.—(1) Subject to paragraph (2), the United States may recover an overpayment of a training benefit from a veteran by any method that is provided by law for the recovery of amounts owing to the Federal Government.

(2) The Secretary may waive the recovery of an overpayment of a training benefit, in whole or in part, in accordance with the provisions of section 5302 of title 38, United States Code.

(f) DEFINITION.—For the purposes of this section, the term "work-related expenses", in the case of a veteran who participates in a job training program under this Act, means any expenses incurred by the veteran by reason of such participation, including expenses for the purchase of work clothes and tools, car or bus fare, and the provision of child care.

SEC. 10. PROHIBITION ON COMMENCEMENT OF JOB TRAINING PROGRAMS UNDER CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.—An employer may not provide a veteran with job training under a job training program if the Secretary determines that, on the date on which the employer intends to commence providing such training, there are insufficient funds available under this Act to carry out the program.

(b) COMMENCEMENT OF PROGRAM.—Each employer shall—

(1) notify the Secretary of the employer's intention to commence furnishing job training to a veteran under a job training program not less than 14 days before such commencement; and

(2) commence the program in accordance with that notification unless the Secretary advises the employer within the 14-day period referred to in paragraph (1) that there are insufficient funds available under this Act to carry out the program.

(c) ADDITIONAL REQUIREMENT RELATING TO COMMENCEMENT OF PROGRAM.—An employer who provides a veteran with job training in a job training program under this Act shall provide the veteran with a copy of the application for approval of the program submitted by the employer to the Secretary of Labor under section 7(b).

SEC. 11. INVESTIGATION AND MONITORING OF PROGRAMS BY THE SECRETARY OF LABOR.

(a) IN GENERAL.—(1) The Secretary of Labor shall ensure that the job training programs carried out under this Act (including the activities of veterans and employers under such programs) are carried out in accordance with the provisions of this Act. In ensuring such compliance, the Secretary of Labor may investigate any matter relating to a job training program (including any application of a veteran for a certificate of eligibility under section 5(c), any employer application for approval of a program under section 7(b), and any program records under subsection (b) of this section).

(2) In conducting an investigation under paragraph (1), the Secretary of Labor may enter onto the premises at which an employer furnishes job training under a job training program and question employees of the employer (including any veterans who are provided with job training under the program) with respect to the program.

(b) PROGRAM RECORDS.—(1) Each employer that provides job training in a job training program under this Act shall maintain such records of the provision of such training as are necessary for the Secretary of Labor to monitor the provision of such training. The Secretary of Labor shall prescribe the form and content of such records.

(2) The Secretary of Labor shall have reasonable access to the records maintained by employers under paragraph (1) for the purpose of monitoring the provision of job training by such employers.

SEC. 12. COORDINATION WITH OTHER JOB TRAINING ASSISTANCE PROGRAMS.

(a) PROHIBITION ON RECEIPT OF CREDIT OR ASSISTANCE FOR VETERANS PARTICIPATING IN CERTAIN OTHER PROGRAMS.—(1) An employer may not be paid training assistance on behalf of a veteran under section 8 during the period referred to in paragraph (3) if, during that period, the employer is allowed a tax credit or is paid an allowance for that veteran under any of the following provisions of law:

(A) Chapters 31, 32, 34, 35, or 36 of title 38, United States Code.

(B) The Job Training Partnership Act (29 U.S.C. 1501 et seq.).

(C) Section 44B of the Internal Revenue Code of 1986 (relating to tax credits for employment of certain new employees).

(2) A veteran may not be paid training benefits under section 9 during the period referred to in paragraph (3) if, during that period, the veteran is paid or receives a benefit or allowance under any of the provisions of law referred to in subparagraphs (A) through (C) of paragraph (1).

(3) The period referred to in this paragraph is the period beginning on the date on which an employer begins to provide job training to a veteran under a job training program under this Act and ending on the date on which the employer ceases to provide such training to the veteran under the program.

(b) PROHIBITION ON RECEIPT OF CREDIT OR ASSISTANCE FOR VETERANS WHO COMPLETE CERTAIN PROGRAMS.—An employer may not be paid training assistance under section 8 on behalf of a veteran, and a veteran may not be paid benefits under section 9, for participation of the veteran in a job training program under this Act if the veteran has completed a program of job training under this Act or under the Veterans' Job Training Act (29 U.S.C. 1721 note).

SEC. 13. COUNSELING AND CASE MANAGEMENT SERVICES.

(a) AUTHORITY TO PROVIDE COUNSELING SERVICES.—(1)(A) The Secretary and the Secretary of Labor may provide the employment counseling services and employment guidance services referred to in subparagraph (B) to veterans who are issued certificates of eligibility for participation in a job training program under section 5(d).

(B) The counseling services and guidance services authorized under this paragraph are services relating to the development of any job-readiness skills and services relating to any other assistance that a veteran may require (as determined by the Secretary and the Secretary of Labor) to enable the veteran to participate in a job training program under this Act, including assistance relating to the resolution of difficulties encountered by the veteran in finding, applying for, and participating in a job training program that is suitable to the veteran.

(2) In the event that the Secretary and the Secretary of Labor exercise the authority to provide counseling services to veterans under this subsection, the Secretary and the Secretary of Labor shall—

(A) upon the issuance to a veteran of a certificate of eligibility for participation in a job training program under section 5(d), advise veterans of the availability of such counseling services;

(B) urge such veterans to request such services; and

(C) provide such services to veterans upon the request of such veterans.

(3) To the extent practicable, the Secretary and the Secretary of Labor shall coordinate the provision of counseling services and guidance services under this subsection, if any, with counseling services provided under sections 1712A, 4103A, 4104, 7723, and 7724 of title 38, United States Code.

(b) CASE MANAGEMENT SERVICES.—(1) The Secretary of Labor shall establish a program of case management services under which the Secretary of Labor shall provide the services described in paragraph (2) to the veterans referred to in paragraph (3) and (4).

(2) The Secretary of Labor shall provide case management services under this subsection as follows:

(A) By assigning to each veteran eligible for such services under this subsection a case manager who is a disabled veterans' outreach program specialist appointed pursuant to section 4103A of title 38, United States Code.

(B) By ensuring that the veteran has a personal interview with the outreach specialist not later than 60 days after the date on which the veteran commences participation in a job training program under this Act.

(C) By ensuring that the veteran meets personally with the outreach specialist on a monthly basis for the purpose of—

(i) preventing the unnecessary voluntary or involuntary termination of the veteran from the program;

(ii) referring the veteran to appropriate counseling, if necessary;

(iii) following the veteran's progress in the program;

(iv) facilitating the veteran's successful completion of the program; and

(v) assessing the veteran's participation in and, as applicable, completion of the program.

(3)(A) Except as provided in subparagraph (B), the Secretary of Labor shall provide case management services under this subsection to any veteran who—

(i) is issued a certificate of eligibility for participation in a job training program under this Act; and

(ii) notifies the Secretary of Labor that the veteran has identified an employer with which the veteran will participate in such a program.

(B) The Secretary of Labor is not required to provide a veteran with case management services referred to in paragraph (2)(C) if—

(i) on the basis of a personal interview between the veteran and an outreach specialist under paragraph (2)(B), the outreach specialist recommends that the veteran does not need such services and the Secretary of Labor ratifies that recommendation; or

(ii) the Secretary of Labor determines that—

(I) the employer of the veteran under the program has an appropriate and effective employee assistance program that is available to the veteran; or

(II) the rate of successful completion of the program by veterans on the date the veteran intends to commence participation in the program (either during the course of the entire program or during the calendar year preceding that date) is more than 60 percent.

(4) Notwithstanding paragraph (3), the Secretary of Labor, after consultation with the Secretary, shall provide case management services under this section to each veteran—

(A) whose participation in a job training program is terminated (either voluntarily or involuntarily); and

(B) who applies to the Secretary of Labor for a certificate of eligibility for participation in another such program under section 5(c).

(d) COUNSELING INFORMATION.—(1) The Secretary and the Secretary of Labor shall carry out a program to provide to veterans who participate in a job training program under this Act information relating to the availability and scope of the following:

(A) The counseling services and guidance services, if any, provided under subsection (a).

(B) The case management services, if any, provided under subsection (b).

(C) The supportive services and resources available to service-connected disabled veterans and veterans who are recently separated from military service under part C of title IV of the Job Training Partnership Act (29 U.S.C. 1721 et seq.).

(D) Any additional counseling services, guidance services, and other support services and resources available to veterans through appropriate Federal, State, and local agencies.

(2) In order to facilitate the provision of services and information to veterans under paragraph (1), the Secretary and the Secretary of Labor shall advise the veterans referred to in that paragraph of the availability, if any, of such services and information not later than the date upon which the Secretary of Labor issues a certificate of eligibility for participation in a job training program under section 5(d).

(e) PAYMENT FOR THE PROVISION OF COUNSELING AND OTHER SERVICES.—(1) Notwithstanding any other provision of law, the Secretary may enter into contracts with appropriate entities or individuals for the provision by such entities or individuals of counseling services, guidance services, case management services, or other services under this section. Such contracts shall contain any terms or conditions that the Secretary determines to be necessary to ensure the appropriate provision of such services and to protect the interests of the United States.

(2) The Secretary may pay entities or individuals for the provision of services under paragraph (1) in accordance with the contracts entered into with such entities or individuals under that paragraph. Any such

payments shall be made from the account relating to the funds available for readjustment benefits referred to in section 3104(a)(7)(B) of title 38, United States Code.

(3) The total amount that the Secretary may pay out of the account referred to in paragraph (2) for the provision of services under this subsection in any fiscal year may not exceed an amount equal to 2 percent of the amount obligated to carry out the purposes of this Act in that fiscal year.

SEC. 14. INFORMATION AND OUTREACH SERVICES.

(a) INFORMATION AND OUTREACH SERVICES.—Subject to subsection (b), the Secretary and the Secretary of Labor shall carry out a program of public information and outreach under which program the Secretary and the Secretary of Labor shall—

(1) inform veterans of the job training programs (and other employment opportunities) provided for under—

(A) this Act;

(B) chapters 30, 31, 36, 41, and 42 of title 38, United States Code; and

(C) any other applicable provisions of law, as determined by the Secretary and the Secretary of Labor;

(2) inform private businesses (including small businesses), appropriate public agencies and organizations, institutions of higher education, trade associations, and labor organizations of such training programs and employment opportunities; and

(3) promote the development of job training and employment opportunities for veterans by—

(A) encouraging employers to create job training programs under this Act;

(B) advising appropriate Federal departments and agencies of the authority provided for under this Act for the establishment of job training programs; and

(C) advising employers of the responsibilities of employers of veterans under chapters 41 and 42 of title 38, United States Code.

(b) COORDINATION OF PROGRAMS.—To the extent practicable, the Secretary and the Secretary of Labor shall coordinate the provision of public information and outreach program under this section with the provision of job counseling, placement, development, and other services under chapters 41 and 42 of title 38, United States Code, and with the provision of similar services offered by other Federal, State and local agencies and organizations.

SEC. 15. ADDITIONAL ASSISTANCE AND RESOURCES.

(a) PERSONNEL.—(1) The Secretary shall make available in regional and local offices of the Department of Veterans Affairs, and the Secretary of Labor shall make available in regional and local offices of the Department of Labor, such personnel as are necessary to carry out the provisions of this Act.

(2) In carrying out the responsibilities of the Secretary of Labor under this Act, the Secretary of Labor shall, to the maximum extent practicable, make use of the services of Directors for Veterans' Employment and Training and Assistant Directors for Veterans' Employment and Training appointed under section 4103 of title 38, United States Code, disabled veterans' outreach program specialists appointed pursuant to section 4103A of that title, and local veterans' employment representatives appointed under section 4104 of that title.

(b) ASSISTANCE OF SMALL BUSINESS ADMINISTRATION.—(1) The Secretary of Labor shall obtain from the Administrator of the Small Business Administration a list of small businesses that are suitable businesses (as determined by the Administrator in consultation with the Secretary of Labor) to carry out job training programs under this Act.

(2) The Administrator of the Small Business Administration shall update the list referred to in paragraph (1) on a regular basis (as determined by the Secretary of Labor).

(c) USE OF RESOURCES AVAILABLE UNDER JOB TRAINING PARTNERSHIP ACT.—(1) To facilitate the carrying out of job training programs under this Act, the Secretary of Labor shall, to the extent practicable, use such resources as are available to assist service-connected disabled veterans and veterans who are recently separated from military service under part C of title IV of the Job Training Partnership Act (29 U.S.C. 1721 et seq.).

(2) The Secretary of Labor shall assist veterans who are denied certificates of eligibility for participation in job training programs under section 5 in taking advantage of any opportunities available to such veterans under any programs carried out pursuant to title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.) or under any other similar programs that are carried out with funds made available to the Secretary of Labor.

SEC. 16. PILOT PROGRAM OF EMPLOYMENT SERVICES FOR HOMELESS VETERANS.

(a) IN GENERAL.—(1) In each of fiscal years 1993 through 1997, the Secretary of Labor shall award grants to the entities referred to in paragraph (2) with which such entities shall provide employment assistance (including counseling and other assistance) to homeless veterans. The Secretary of Labor shall prescribe procedures for the award of such grants.

(2) An entity entitled to a grant under this subsection is any non-profit entity determined by the Secretary of Labor (under regulations prescribed by that Secretary) to have special expertise or experience in the provision of employment assistance to homeless individuals or in other employment matters relating to such individuals.

(b) FUNDING LIMITATION.—In carrying out this section, the Secretary of Labor may use not more than $5,000,000 of the funds obligated or otherwise made available to the Department of Veterans Affairs and the Department of Labor in each of fiscal years 1993 through 1997 pursuant to the authorization of appropriations referred to in section 20.

SEC. 17. PROGRAM ASSESSMENT.

(a) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary, shall evaluate on an annual basis the status of the programs authorized and carried out under this Act to ensure that such programs satisfy the purposes of this Act.

(b) QUARTERLY ASSESSMENT.—The Secretary of Labor shall collect on a quarterly basis from appropriate officials of State employment services or offices and the Directors of Veterans' Employment and Training of each State in which job training programs are carried out under this Act the following information:

(1) The number of veterans in the State who were certified for participation in such programs under section 5(d) during the previous calendar quarter.

(2) The number of such veterans who participated in such programs during that period.

(3) The number of such veterans who completed participation in such programs during that period.

(4) The number of veterans who terminated (either voluntarily or involuntarily) participation in such programs, and the reasons for each such termination.

(5) Such other information as the Secretary of Labor, in consultation with the Secretary, determines to be appropriate for the purposes of ensuring the effective administration of the programs.

SEC. 18. REPORTS.

(a) PRELIMINARY REPORT.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Labor shall submit to the committees referred to in paragraph (2) a report on—

(A) the actions taken by the Secretary and the Secretary of Labor to implement this Act; and

(B) the estimated administrative costs of carrying out this Act.

(2) The Secretary of Labor shall submit the report under paragraph (1) to the following:

(A) The Committee on Veterans' Affairs of the Senate.

(B) The Committee on Labor and Human Resources of the Senate.

(C) The Committee on Veterans' Affairs of the House of Representatives.

(D) The Committee on Education and Labor of the House of Representatives.

(b) ANNUAL REPORTS.—Not later than March 31, 1994, and on an annual basis thereafter, the Secretary of Labor shall submit to the committees referred to in subsection (a)(2) a report containing the following:

(1) The general assessment of the Secretary of Labor under section 17(a) of the programs carried out under this Act during the calendar year preceding the report.

(2) The quarterly assessments carried out by the Secretary of Labor under section 17(b) for each of the four calendar quarters preceding the date of the report.

(3) A statement by the Secretary relating to—

(A) amounts paid by the Secretary to employers and veterans under this Act during such calendar quarters;

(B) any obligation of funds in connection with the implementation of this Act that is projected by the Secretary for the calendar year following the report;

(C) a general assessment by the Secretary of the adequacy and timeliness of payments made by the Secretary under this Act; and

(D) such other information as the Secretary considers appropriate relating to the process of making payments to employers and veterans under this Act.

(4) Any additional assessments, matters, or recommendations that the Secretary of Labor or the Secretary consider appropriate.

SEC. 19. TERMINATION OF PROGRAM.

An employer may not be paid training assistance on behalf of a veteran under section 8 and a veteran may not be paid training benefits under section 9 with respect to any training provided to the veteran in a job training program under this Act if the training is provided after September 30, 1997.

SEC. 20. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—(1) There is authorized to be appropriated to the Department of Veterans Affairs and the Department of Labor for the purpose of carrying out the provisions of this Act the following:

(A) $75,000,000 in fiscal year 1993.

(B) $100,000,000 in fiscal year 1994.

(C) $125,000,000 in fiscal year 1995.

(D) $125,000,000 in fiscal year 1996.

(E) $100,000,000 in fiscal year 1997.

(2) Amounts appropriated pursuant to this section shall remain available until September 30, 1997, without fiscal year limitation.

(b) LIMITATION ON OBLIGATION FOR ADMINISTRATIVE COSTS.—Not more than 5 percent of

the amount appropriated or otherwise made available to the Department of Veterans Affairs and the Department of Labor in a fiscal year pursuant to the authorization of appropriations for that fiscal year under subsection (a) may be obligated for administrative activities of the Secretary or the Secretary of Labor under this Act.

SUMMARY—VETERANS' EMPLOYMENT AND TRAINING ACT OF 1992

Section 1. Short Title: Veterans' Employment and Training Act of 1992.

Section 2. Purpose: To address the problem of severe and often continuing unemployment among veterans by providing incentives to employers to hire and train veterans in stable and permanent positions of employment.

Section 3. Definitions.

Section 4. Provides that the Secretary of Veterans Affairs and the Secretary of Labor shall assist eligible veterans in obtaining employment in permanent and stable positions requiring significant training.

Section 5. Provides that the Secretary of Labor certify veterans to participate in a job training program under this Act if the veteran meets requirements established by this section and submits an application for such a certificate. The Secretary may withhold issuance of a certificate of eligibility if it is necessary to limit the number of participants in job training programs due to lack of funds. Veterans denied certificates of eligibility may appeal the denial. Veterans must commence participation in a job training program within 90 days of the date the certificate is issued.

Section 6. Establishes requirements for approval of a job training program under this Act. Employers seeking approval of a job training program must provide such training in a field having reasonable probability of stable, long-term employment. They must devise an appropriate training program, and employ and train a certified veteran in that position. In general, an employer shall provide a period of training of not less than six months nor more than two years. Veterans in job training programs are to receive compensation and benefits similar to those provided by the employer to non-veteran employees. If practicable, the employer is to retain the veteran in the position for which the veteran was trained upon completion of the training program.

Section 7. Provides that the Secretary of Labor shall approve each job training program established by an employer in accordance with the requirements of this section. Job training programs may include certain apprenticeships or other on-job training programs. The Secretary of Labor may discontinue approval of a program if that program no longer meets the established requirements or if the rate of successful completion of the program by participating veterans is unacceptably low.

Section 8. Provides that the Secretary of Labor shall approve payment of training assistance to employers upon receipt from the employer of certifications required by this section. The Secretary of Veterans Affairs shall pay training assistance to eligible employers upon notice of approval from the Secretary of Labor. Payments shall equal the product of 50 percent of the hourly wage of the veteran and the number of hours worked by the veteran during the period, and shall not exceed $5,000 per annum. In addition, employers may receive up to $3,000 for the modification of facilities or equipment on behalf of a disabled veteran hired and trained under this Act.

Section 9. Provides that the Secretary of Veterans Affairs shall pay certified veterans participating in an approved job training program under this Act up to $1,500 to defray such work-related expenses as the purchase of work clothes and tools, car or bus fare, and the provision of child care.

Section 10. Prohibits commencement of job training programs under certain circumstances. An employer may not provide a veteran with job training under this Act if the Secretary of Veterans Affairs determines that, on the date on which the employer intends to commence providing such training, there are insufficient funds to carry out the program. Employers must notify the Secretary of Veterans Affairs at least 14 days before commencing a program of job training, and may commence the program after 14 days unless the Secretary of Veterans Affairs notifies them otherwise.

Section 11. Provides for the investigation and monitoring of job training programs. The Secretary of Labor may investigate any matter relating to the job training program. The Secretary of Labor shall prescribe the form and content of records to be maintained by employers providing job training under this Act, and shall have reasonable access to such records for monitoring purposes.

Section 12. Provides for coordination with other job training assistance programs to assure that employers and veterans do not receive payments under this Act if they are receiving payments in the form of tax credits, training assistance, or training benefits under another training assistance program. Payments may not be made to an employer or a veteran under this Act if the veteran has previously completed a program of job training under this Act or under the Veterans' Job Training Act.

Section 13. Provides that the Secretary of Veterans Affairs and the Secretary of Labor may provide employment counseling and employment guidance services to certified veterans to enable such veterans to participate in a job training program under this Act. The Secretary of Labor shall establish a program of case management services for certain certified veterans.

Section 14. Provides for establishment of a public information and outreach program to inform veterans of the job training programs provided under this and other Federal training programs; and to inform private businesses, appropriate public agencies, and others of such training programs.

Section 15. Provides that the Secretary of Veterans Affairs and Secretary of Labor make available in regional and local offices such personnel as are needed to carry out the provisions of this Act. The Secretary of Labor shall, to the maximum extent practicable, make use of other available resources including services of Directors for Veterans' Employment and Training, the Small Business Administration, and the Job Training Partnership Act.

Section 16. Provides that the Secretary of Labor shall establish a pilot program to provide employment services, including counseling and other assistance, to homeless veterans. In carrying out this section, the Secretary of Labor may use not more than $5,000,000 per year of funds made available under this Act.

Section 17. Provides that the Secretary of Labor shall collect information on the job training programs on a quarterly basis. The Secretary of Labor, in consultation with the Secretary of Veterans Affairs, shall annually evaluate the status of the programs authorized and carried out under this Act to ensure that they satisfy the purposes of this Act.

Section 18. Establishes reporting requirements under this Act. Not later than 90 days after the effective date of this Act, the Secretary of Labor shall submit a report on the actions taken to implement this Act and supply estimated administrative costs for carrying it out. The Secretary shall also submit annual reports assessing the job training programs carried out under this Act.

Section 19. Provides for termination of the programs carried out under this Act on September 30, 1997.

Section 21. Authorizes to be appropriated to the Department of Veterans Affairs and the Department of Labor for carrying out the provisions of this Act: $75,000,000 in FY 1993; $100,000,000 in FY 1994; $125,000,000 in FY 1995 and FY 1996; and $100,000,000 in FY 1997. Amounts appropriated pursuant to this section shall remain available until September 30, 1997, without fiscal year limitation. Not more than 5 percent of the amount made available under this section may be obligated for administrative activities under this Act.

By Mr. BINGAMAN (for himself, Mr. NUNN, Ms. MIKULSKI, Mr. KERREY, and Mr. LIEBERMAN):

S. 2516. A bill to amend the National Security Act of 1947 to revise the functions of the National Security Council and to add the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative to the statutory membership of the National Security Council; to the Committee on Armed Services.

NATIONAL SECURITY COUNCIL AMENDMENTS

• Mr. BINGAMAN. Mr. President, today, I am introducing the National Security Council Amendments of 1992. This is one of two bills that Senators NUNN, MIKULSKI, KERREY, and LIEBERMAN and I are introducing today. I particularly want to note the contribution of Senator NUNN and Senator MIKULSKI in drafting this legislation; we've been working closely to try to adapt cold war policy and institutions to a post cold war world.

I am pleased to announce that Congressman AUCOIN and Congressman MCCURDY introduced the identical bills today. I am delighted to have collaborate with them on this important legislation.

This bill, and the companion bill, the National Advanced Research Projects Agency Act of 1992, adjusts Government policies in light of the end of the cold war to improve our technological competitiveness and increase our national security, especially our national economic security.

These bills draw on the recommendations of a recent report of the Carnegie Commission on Science, Technology and Government entitled, "Technology and Economic Performance: Organizing the Executive Branch for a Stronger National Technology Base." That report was prepared by a distinguished task force that included Adm. Bobby Inman, chair, Dr. William Perry, Dr. Lewis Branscomb, and Dr. Robert Solow. In drafting our legislation, my colleagues and I have benefited greatly from the work of this expert group.

CHANGING NATURE OF NATIONAL SECURITY

The scope and nature of the national security threat facing the United States have fundamentally changed in recent years. The former Soviet Union has ceased to exist, its economy shattered. The Warsaw Treaty Organization has been dissolved. The nations of Eastern Europe and the former Soviet Union have embarked upon an ambitious course to remake their societies based on the principles of democracy and free market economics. These events have led to reduce military threats and lessened international tensions.

Coincident with the reduction of direct military threats, there has been an increased recognition of the relative importance of economic growth, trade, and technology as the underpinnings of the long-term strength and security of the United States.

True national security is founded upon a vigorous and broad-based national economy. An economy that provides advanced and critical technologies for national defense as well as commercial products. An economy that provides adequate manufacturing in the United States to assure productive employment for each American who desires it. An economy that consistently spurs higher productivity and provides a rising standard of living for American citizens. Based on these standards, we have not achieved true national security.

In fact, we are experiencing limited economic growth. We have enormous budget and trade deficits, and a huge international debt. We are becoming increasingly and excessively dependent on foreign suppliers for vital industrial goods and energy. We face unacceptable constraints on this country's policy options in military affairs, foreign affairs, and economic affairs. This means that as a Nation we do not have the money to spend on such domestic necessities as education, plant and equipment, and infrastructure. We do not have the money to spend to ease the difficulties facing underdeveloped nations or the former Soviet republics. We are unable to assure an uninterruptable domestic supply of critical industrial goods, not only for our important commercial enterprises, but also to properly support our military in times of crisis. And we recently were forced to go to war in the Persian Gulf to secure sources of oil for this country and the world.

The National Security Council Amendments of 1992 will not solve the problems of deficits, debt, and dependence. In fact, this bill would make relatively modest changes in the organization of the Government. However, the bill is a crucial step toward recognizing the vital role that economics, trade, and technology play in assuring the long-term national security of this country. It will also improve the organizational environment for fully addressing these problems.

NATIONAL SECURITY COUNCIL AMENDMENTS OF 1992

The National Security Council amendments recognize that economic strength, and the resultant benefits to national security, can best be obtained through planning and the coordination of strategic economic, trade, and technology policies.

The bill contains two amendments to the National Security Act of 1947. The first would revise the functions of the National Security Council to encompass advising the President on matters of domestic policy, foreign policy, foreign trade, and military policy as they affect national security—including national economic security.

The second amendment would encourage broader coordination and strategic planning by making the Secretary of Commerce, the Secretary of the Treasury, and the U.S. Trade Representative statutory members of the National Security Council. When matters of national security are discussed and policies determined by the highest councils of Government, the caretakers of the Nation's economic health will have a place at the table. The additional membership on the National Security Council will assure that the hard choices and difficult problems we are facing today are fully considered.

How will we manage defense conversion and downsizing with the minimum of dislocation? How will this country adjust to the economic challenges of a united Europe and a burgeoning Japan? How will we achieve energy security? How will we pursue the need for export controls without unnecessarily limiting international sales of our most competitive industries? These are the kinds of issues that are vital to the future of this country and that, under its amended charter, the National Security Council must consider in all their ramifications.

TECHNOLOGY POLICY AND NATIONAL SECURITY

The clearest link between our Nation's economic performance and its national security is a strong science and technology base. Unfortunately, the trends are not encouraging. Our commercial technological leadership has eroded in many areas. And in fast-moving fields, where defense technology historically led commercial technology, the reverse is now true. Moreover, that reversal, together with complex military accounting and procurement policies, mean that the commercial technology base is less and less accessible to the Department of Defense.

In effect, the United States now has two technology bases—one tied to the defense industry, the other tied to commercial industry. This inefficiency is particularly striking at a time of growing convergence between the underlying technologies that support military and commercial activities—computers, electronics, software, and advanced materials, to name the most important.

If we are to reverse this decline, we must move toward a cutting-edge technology base that will serve both military and commercial needs—a national technology base. Such a move would allow the Department of Defense to draw more easily from the commercial sector to meet national security needs. At the same time, it would allow DOD's continuing support of technology to contribute substantially more to the Nation's commercial performance and the growth of our economy.

The National Security Council, under its amended charter, could give particular attention to issues related to the strengthening of the national technology base. This approach reflects the view that economic performance is critically important to national security and that technological vitality is of central importance to the economy.

CONCLUSION

The changed nature of the threat to the security of the United States is readily apparent to all who care to look. The need to recognize the economic challenges facing us and respond to those challenges is urgent.

Moreover, the emphasis on economic security need not jeopardize traditional military might. The key is an integrated national technology base, which would strengthen simultaneously the capabilities of Government and industry.

We are entering an era in which it is imperative that we link our economic policy and our military policy—a significant departure from past practice. But that link will have to be forged through the policy development process at the highest level of the executive branch. This bill, by expanding the charter and membership of the National Security Council, seeks to begin that process.

Mr. President, I ask unanimous consent that the text of the National Security Council Amendments of 1992 be printed in the RECORD.

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

S. 2516

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 "National Security Council Amendments of 1992".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The scope and nature of the national security threat facing the United States has fundamentally changed as a result of the dissolution of the Soviet Union and the Warsaw Treaty organization.

(2) Coincident with the reduction of direct military threats, there has been an increasing recognition of the relative importance of

economics, trade, and finance to the long-term strength and security of the United States.

(3) Limited economic growth, budget deficits, international debt, and excessive dependence on foreign sources for vital industrial goods and sources of energy constitute unacceptable constraints on the Nation's policy options in defense, foreign, and economic affairs.

(4) National security is founded upon (A) a vigorous and broad-based national economy which provides advanced and critical technologies for national defense as well as commercial products, (B) adequate production in the United States to provide productive employment for each American who desires it, and (C) a rising standard of living for American citizens.

(5) Economic strength, and the resultant benefits to national security, can best be obtained through planning and the coordination of strategic economic, trade, and financial policies.

(6) There is a pressing need to increase the level of presidential attention to economic and technological issues that directly affect national security.

SEC. 3. FUNCTIONS OF THE NATIONAL SECURITY COUNCIL.

Section 101(a) of the National Security Act (50 U.S.C. 402(a)) is amended in the third undesignated paragraph—

(1) by inserting "foreign trade," after "foreign,";

(2) by inserting "Federal" before "Government"; and

(3) by inserting ", including national economic security" before the period at the end.

SEC. 4. MEMBERSHIP OF THE NATIONAL SECURITY COUNCIL.

Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth undesignated paragraph—

(1) by striking out clauses (5) and (6);

(2) by redesignating clause (7) as clause (8); and

(3) by inserting after clause (4) the following:

"(5) the Secretary of Commerce;

"(6) the Secretary of the Treasury;

"(7) the United States Trade Representative; and".•

By Mr. BINGAMAN (for himself, Mr. NUNN, Ms. MIKULSKI, Mr. KERREY, and Mr. LIEBERMAN):

S. 2517. A bill to amend title 10, United States Code, to rename the Defense Advanced Research Projects Agency as the National Advanced Research Projects Agency, to expand the mission of that agency, and for other purposes; to the Committee on Armed Services.

NATIONAL ADVANCED RESEARCH PROJECTS AGENCY ACT

• Mr. BINGAMAN. Mr. President, today I am introducing the National Advanced Research Projects Agency Act of 1992. This is one of two bills that Senators NUNN, MIKULSKI, KERREY and LIEBERMAN and I are introducing today. I particularly want to note the contribution of Senator NUNN and Senator MIKULSKI in the drafting of this legislation; we've been working closely to try to adapt cold war policy and institutions to a post-cold-war world.

I am pleased to announce that Congressman AUCOIN and Congressman MCCURDY are introducing identical bills. I am delighted to have collaborated with them on this important legislation.

This bill, and the companion bill, the National Security Council Amendments of 1992, adjust Government policies in light of the end of the cold war to improve our economic competitiveness and increase our national security, especially our national economic security. These bills also recognize the urgent need to move toward a single, national technology base. Distinctions between defense technology and civilian technology have blurred, and the effective integration of these two, largely separate, technology bases will strengthen the capabilities of both Government and industry.

The bills I introduce today draw on the recommendations of a recent report of the Carnegie Commission on Science, Technology and Government entitled, "Technology and Economic Performance: Organizing the Executive Branch for a Stronger National Technology Base." That report was prepared by a distinguished task force that included Adm. Bobby Inman, chair, and Dr. William Perry, Dr. Lewis Branscomb, and Dr. Robert Solow. In drafting our legislation, my colleagues and I have benefited greatly from the work of this expert group.

DECLINE OF U.S. TECHNOLOGICAL LEADERSHIP

The Carnegie Commission identified three adverse changes in America's technological position since the 1960's.

First, our commercial technological leadership has eroded in many areas—a trend that has received widespread attention. For example, a recent report from the private sector Council on Competitiveness, "Gaining New Ground: Technology Priorities for America's Future," warned that our country's position in many critical technologies is slipping and, in some cases, has been lost altogether. American industry faces particular problems in process technology and its application to manufacturing and production systems.

Second, in fast-moving dual-use fields—those with both commercial and defense applications—the Department of Defense has gone from being a technological leader to a follower. Although defense technology investments still have a powerful impact on commercial technology, the defense technology base is increasingly dependent on developments in the larger and more dynamic commercial sector.

Moreover, dual-use technologies account for an increasing share of the basic technologies critical to the military. Electronics, software, and new materials are among the technologies critical both to economic competitiveness and to advanced weapon systems. Thus even though defense and commercial products continue to diverge from one another, the supporting technologies are increasingly converging.

Third, the commercial technology base has become less and less accessible to the Department of Defense, both because of the rapid growth of commercial technology and because of complex military accounting and procurement policies. In effect, the United States now has two technology bases—one tied to the defense industry, the other tied to commercial industry.

These changes, in the view of the Carnegie Commission and other experts, add up to a significant relative decline in America's technological position. Moreover, this occurs at a time when the end of the cold war is bringing reduced defense budgets.

If we are to reverse this decline, we must move toward a single, cutting-edge technology base that will serve both military and commercial needs—a national technology base. Such a move would allow the Department of Defense to draw more easily from the commercial sector to meet national security needs. At the same time, it would allow DOD's continuing investments in technology to contribute substantially more to the Nation's commercial performance and the growth of our economy.

NATIONAL ADVANCED RESEARCH PROJECTS AGENCY ACT OF 1992

The National Advanced Research Projects Agency Act of 1992 is designed to help integrate defense and commercial technologies into a strong, unified, national technology base.

The act transforms the Defense Advanced Research Projects Agency [DARPA] into the National Advanced Research Projects Agency [NARPA]. The new NARPA's mission is threefold.

First, NARPA would remain in the Department of Defense, and it would continue to support technologies of potential military importance, as viewed from a longer term perspective than the individual services can be expected to take. Many of NARPA's projects would no doubt continue to draw on defense firms, and some—like the Stealth fighter programs in the 1980's—would be highly classified or even black programs.

Second, however the new NARPA would focus more heavily on dual-use technology and reach out to commercial firms that traditionally have not worked with the Department of Defense.

To elaborate, an increasing fraction—but not all—of the work supported by NARPA would involve technologies with both defense and commercial applications. For example, computers, software, and electronics—areas of increasing military importance—are also areas in which commercial technology is often more sophisticated than defense technology. In such areas, NARPA would be charged with moving the Nation toward a strong, unified, national technology base. The Department of Defense would benefit

by getting faster and cheaper access to commercial technology, and commercial firms would benefit by the availability of additional Federal R&D dollars.

To accomplish this, NARPA would reach out to nondefense firms and rely more heavily on the cooperative agreement, in place of the contract, as the legal mechanism for supporting research. DARPA currently controls all decisions about technical goals and project management. To attract firms that traditionally have not worked with DOD, NARPA will have to operate more collaboratively.

Third, NARPA would be allowed to support advanced technologies that are primarily aimed at the missions of other Federal departments and agencies, but only when other agencies request and pay for that support. The National Security Agency is a model for NARPA in this regard. DOD is the predominant customer of the National Security Agency, but NSA has a charter to meet the security needs of the State Department and other departments and agencies—an approach that has proven both efficient and effective.

To help NARPA carry out its charter, the act creates an interagency executive committee to advise the Secretary of Defense and the head of NARPA on policies, priorities and programs of the Agency. This committee would be composed of the Director of the White House Office of Science and Technology Policy, the Director of Defense Research and Engineering, and the Under Secretary of Commerce for Technology. The Director of OSTP would chair the executive committee.

The interagency executive committee would serve to provide NARPA both with a broad understanding of technological capabilities in Government and industry and with the means to coordinate with other Federal technology agencies. We view this not as intrusion into DOD's decisionmaking process, but rather as a necessary reinforcement of NARPA's dual-use charter.

The act also would raise the status of both the Director of NARPA to a level IV, and the Director of Defense Research and Engineering to a level III, in keeping with the high level of responsibility attached to those positions.

WHAT THIS ACT DOES NOT DO

To anticipate potential criticisms of this bill, let me also tell you what it does not do.

First, the bill does not raid the Department of Defense budget in order to bolster commercial competitiveness. By leaving NARPA within DOD, we have assured continuing support for purely military projects. Moreover, we have not given NARPA the job of fixing the competitive problems of U.S. industry. DOD could not fix industry's competitive problems even if it wanted to.

But DOD must be able to engage more effectively with the commercial sector, for its own sake. Dr. Lewis Branscomb, an author of the Carnegie Commission report and for many years IBM's chief scientist, put it this way at a Joint Economic Committee hearing last fall:

> [T]he fact of the matter is that unless DARPA has a charter to explore dual-use technology, it's going to go down the tubes with the rest of the Defense Department into a defense ghetto. We'll go back to having arsenals, and we will have a poorly defended country. . . . DARPA and the rest of the Defense Department is going to have to realize that the United States now lives in a world of technology, most of which is private, a large part of which is not even located in the United States. Defense is going to have to use it.

Second, the transformation of DARPA into NARPA does not open the door to unrestricted Federal involvement in commercial technology development. On this point, it's worth recalling that DARPA's traditional approach was to support fundamental research with long-term importance, even if there was no direct or immediate military application. For example, DARPA supported pathbreaking R&D by the commercial computer industry on the grounds that DOD was a major user of computers and that acceleration of the technology would benefit military procurement of commercial products. Industrial spinoffs were traditionally a conscious objective of DARPA's project managers in computers and elsewhere.

In recent years, however, internal DOD budget pressures and other factors have forced DARPA to narrow its sights, to the detriment of the Nation's commerical technology base and, ultimately, DOD itself. Kenneth Flamm, a technology specialist at the Brookings Institution, describes the cyclical process by which DARPA's "tolerance for visionary research projects with only indirect military relevance has been followed by budgetary distress and renewed emphasis on immediate applications, engineering, and working hardware."

> Even today, when economic competition with Japan is high on the agenda of projects like DARPA's strategic computing program, military research expenditure is constantly forced to define itself in terms of concrete military applications. Strategic computing, for example, must channel a significant portion of its funds to traditional military contractors, and evidence of production of concrete military applications—deliverables—must be presented to justify continued funding. "Kenneth Flamm, Targeting the Computer: Government Support and International Competition." Washington, DC: The Brookings Institution, 1987, p. 190.

Congress has offset adverse pressures on DARPA to some degree with additional funds for dual-use technology, but the problem remains.

In short, the bill I am introducing today does not seek to enlarge, but rather to restore, DARPA's traditional role in the Department of Defense. That role puts DOD's mission first, to be sure. But it sees that mission as requiring a national technology base, rather than a defense industry "ghetto," to use Dr. Branscomb's phrase. The indirect effect of that approach would be to enhance NARPA's contribution to the national technology base even as the agency funded a smaller fraction of the Nation's technical effort.

Finally, the transformation of DARPA to NARPA does not preclude the expansion of the Commerce Department's Advanced Technology Program or the creation of other, NARPA-like entities in civilian agencies—approaches I would fully support.

CONCLUSION

The convergence of technologies that support commercial and military activities makes it possible to move to a single national technology base. Moreover, DOD's declining access to the commercial sector, where much leading-edge technology now resides, makes the move to a national technology base necessary as well. DARPA, with its proven ability to develop pathbreaking dual-use technologies, is the logical organization to help bring about this transition.

Toward that end, the National Advanced Research Projects Agency Act of 1992 adjusts the name and formal charter of DARPA. In part, through the creation of NARPA we seek to restore DARPA's traditional approach to dual-use technologies such as computers. That approach—characterized by support for visionary research with only indirect military relevance—has too often been abandoned in the face of DOD pressures. But the act envisions more. It seeks to raise the fraction of DARPA's resources devoted to dual-use technologies, in keeping with the increasing convergence of commercial and military support technologies. The act also enables DARPA to undertake R&D projects for other departments and agencies, while recognizing that DOD remains its major customer.

Commercial firms in the United States should benefit from the transformation of DARPA into NARPA. To the extent that DOD's current technology investments do not span the commercial-military divide, 60 percent of Federal R&D funds are going to support only 6 percent of our GNP. Increased support for commercial industry is not the major justification for this act, however. Rather it is to ensure military readiness by eliminating what has aptly been called the ghettoization of defense technology.

In short, we are entering an era in which it is imperative that we link our competitive policy and our military policy. That marks a departure from past practice, which treated national security and industrial competitive-

ness as separate, and often contradictory goals. This act acknowledges their growing commonality and takes a major step toward helping to achieve it.

Mr. President, I ask unanimous consent that the text of the National Advanced Research Projects Agency Act of 1992 be printed in the RECORD.

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

S. 2517

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 "National Advanced Research Projects Agency Act of 1992".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) United States leadership in commercial manufacturing has eroded in many sectors at the same time that growth in the world technology base and the globalization of industrial activities have increased international economic interdependence.

(2) The Department of Defense no longer leads the national technology base of the United States in setting priorities for research and development of emerging and advancing technologies having both defense and commercial applications as the demands of commercial enterprises for increasingly complex systems and subsystems now define the priorities for research and development of technologies having commercial applications.

(3) The commercial technology base of the United States has become increasingly inaccessible to the defense technology base of the United States, in part because of complex accounting and procurement policies and procedures applicable to Department of Defense research and development activities, and in part because commercial research and development has grown much more rapidly than defense research and development.

(4) The future economic and military security of the United States depends on technological advances impelled by commercial needs.

(5) Although primary responsibility for the advancement and use of commercial technology rests with private industry, the Federal Government must work deliberately to advance civilian, as well as military, technological capacity in order to create a truly national technology base in the United States.

(b) PURPOSES.—The purposes of this Act are—

(1) to rename the Defense Advanced Research Projects Agency (DARPA) as the National Advanced Research Projects Agency (NARPA);

(2) to expand the mission of that agency to include not only the conduct of research, development, and prototyping of advanced technologies having only defense applications, but also the conduct of research and development of advanced technologies having nondefense as well as defense applications;

(3) through performance of that expanded mission by the agency, to provide a stronger linkage between the modern military needs of the Armed Forces of the United States and the high technology needs of commercial industry in the United States;

(4) to ensure that NARPA retains the responsibility to the military departments that DARPA has had while the agency helps to create a national, rather than solely a defense, technology base; and

(5) to direct NARPA to support research and development of—

(A) generic technologies having commercial as well as military applications;

(B) long-range, high-risk technologies having the potential to yield significantly beneficial results for the prosperity and security of the United States; and

(C) advanced technologies leading to products that meet the mission objectives of nondefense agencies of the Federal Government when requested and supported by those agencies.

SEC. 3. NATIONAL ADVANCED RESEARCH PROJECTS AGENCY.

(a) DARPA RENAMED.—The Defense Advanced Research Projects Agency, an agency within the Department of Defense, is hereby renamed the "National Advanced Research Projects Agency".

(b) STATUTORY CHARTER FOR NARPA.—(1) Chapter 8 of title 10, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER III—NATIONAL ADVANCED RESEARCH PROJECTS AGENCY

"Sec.
"211. Establishment and administration.
"212. Functions and duties.
"213. Private sector participation.
"214. Support by other departments and agencies.

"§ 211. Establishment and administration

"(a) IN GENERAL.—The National Advanced Research Projects Agency is a Defense Agency.

"(b) DIRECTOR.—(1) The head of the agency is the Director.

"(2) The Director is appointed by the President, by and with the advice and consent of the Senate. The Secretary of Defense, after consultation with the executive committee established by subsection (d), shall recommend persons for appointment to the position of Director.

"(3) Subject to the authority, direction, and control of the Secretary of Defense, the Director shall carry out the mission and perform the duties provided in section 212 of this title.

"(c) DEPUTY DIRECTOR.—(1) There is a Deputy Director of the agency who is appointed by the Director with the approval of the Secretary of Defense.

"(2) The Deputy Director performs such duties and exercises such authority as may be prescribed by the Director with the approval of the Secretary of Defense.

"(3) When there is a vacancy in the office of Director or in the absence or disability of the Director, the Deputy Director acts as Director and performs the duties, and exercises the authority, of the Director until a successor is appointed or the absence or disability ceases.

"(d) INTERAGENCY EXECUTIVE COMMITTEE.—(1) There is an interagency executive committee composed of—

"(A) the Director of the Office of Science and Technology Policy, who shall be the chairman of the committee;

"(B) the Director of Defense Research and Engineering; and

"(C) the Under Secretary of Commerce for Technology.

"(2) The executive committee shall advise the Secretary of Defense and the Director of the National Advanced Research Projects Agency regarding policies, priorities, and programs of the agency. The President may assign the executive committee additional duties regarding the agency that the President considers appropriate.

"§ 212. Functions and duties

"(a) IN GENERAL.—The National Advanced Research Projects Agency is the central research and development organization of the Department of Defense. It is a primary responsibility of the agency to maintain the technological superiority of the United States over the potential adversaries of the United States.

"(b) SPECIFIC DUTIES.—The agency shall—

"(1) together with United States industry, federal laboratories, and colleges and universities, pursue (A) imaginative and innovative research and development projects having significant potential for both military and commercial applications, and (B) imaginative and innovative research and development projects having significant potential solely for military applications;

"(2) support and stimulate a national technology base that—

"(A) serves both civilian and military purposes through enhanced technology sharing and otherwise; and

"(B) by so serving both purposes, increases the productivity of both the civilian and military sectors;

"(3) manage and direct the conduct of basic and applied research and development that exploits scientific breakthroughs and demonstrates the feasibility of revolutionary approaches for improved cost and performance of advanced technology having future military applications, including advanced technology also having future civilian applications;

"(4) when requested and supported by a department or agency of the Federal Government not primarily involved in the performance of national security functions, manage and direct the conduct of basic and applied research and development of any other advanced technology that can be applied to increase the capability of that department or agency to attain mission objectives of the department or agency; and

"(5) stimulate increased emphasis on prototyping in defense systems and subsystems by—

"(A) conducting prototype projects embodying technology that might be incorporated in joint programs, programs in support of deployed forces, or selected programs of the military departments; and

"(B) on request of the Secretary of a military department, assisting that military department in any prototyping program of the military department.

"(c) OTHER DUTIES.—The agency shall perform any additional duties that the Secretary of Defense assigns.

"§ 213. Private sector participation

"(a) COOPERATIVE AGREEMENTS.—To the extent practicable, the Director shall enter into cooperative agreements and other transactions with private sector firms in order to carry out research and development within the responsibility of the National Advanced Research Projects Agency, especially research and development of advanced technologies with the potential for having commercial and defense applications.

"(b) PARTICIPATION OF NONDEFENSE FIRMS.—The Director shall take appropriate action to ensure that, among the private sector firms participating in agency research and development activities, there are in-

volved to a significant extent private sector firms that have not had a significant level of involvement in research and development activities of the Department of Defense.

"§ 214. Support by other departments and agencies

"The head of a department or agency of the Federal Government may transfer to the National Advanced Research Projects Agency, out of funds available to that department or agency for research and development, such sums as may be necessary for the National Advanced Research Projects Agency to carry out research and development requested by such department or agency head pursuant to section 212(b)(3) of this title.".

(2) The table of subchapters at the beginning of chapter 8 of such title is amended by inserting after the item relating to subchapter II the following new item:

"III. National Advanced Research Projects Agency ..... 211".

SEC. 4. PERSONNEL MATTERS.

(a) PAY RATE OF THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—(1) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Director of Defense Research and Engineering, Department of Defense.".

(2) Section 5315 of such title is amended by striking out the following:

"Director of Defense Research and Engineering.".

(b) PAY RATE OF THE DIRECTOR OF NARPA.—(1) Section 5315 of such title is amended by adding at the end the following:

"Director, National Advanced Research Projects Agency, Department of Defense.".

(2) Section 5316 of such title is amended by striking out the following:

"Director, Advanced Research Projects Agency, Department of Defense.".

SEC. 5. CONFORMING AMENDMENTS AND REFERENCES.

(a) CONFORMING AMENDMENTS.—(1) Section 101(44)(B) of title 10, United States Code, is amended by inserting "by law or" after "designated".

(2) Section 2371(a) of such title is amended by striking out "Defense Advanced Research Projects Agency" and inserting in lieu thereof "National Advanced Research Projects Agency".

(b) REFERENCE IN OTHER LAW.—Any reference in any other law to the Defense Advanced Research Projects Agency shall be deemed to refer to the National Advanced Research Projects Agency.●

By Mr. DODD (by request for himself, Mr. GRAMM, Mr. RIEGLE, Mr. D'AMATO, Ms. KASSEBAUM, Mr. WIRTH, Mr. SANFORD, Mr. MACK, and Mr. KASTEN):

S. 2518. A bill to amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small business and others through exempted offerings under the Securities Act and through investment pools that are expected or exempted from regulation under the Investment Company Act 1940 and through business development companies; to the Committee on Banking, Housing and Urban Affairs.

SMALL BUSINESS INCENTIVE ACT OF 1992

● Mr. DODD. Mr. President, today I am introducing the Small Business Incentive Act of 1992, legislation to facilitate access to the capital markets for small businesses in this country. I am joined in introducing the bill by the ranking minority member of the Securities Subcommittee, Senator GRAMM, as well as Senators RIEGLE, GARN, D'AMATO, KASSEBAUM, WIRTH, SANFORD, MACK, and KASTEN. This legislation was developed by the SEC as part of its small business initiative, and we are introducing it at the request of the agency.

This legislation, together with proposed regulatory changes by the SEC, would reduce the regulatory burdens on offerings of securities by small businesses. In addition, through a number of amendments to the Investment Company Act, the legislation would give venture capital pools, business development companies and other pooled investment vehicles new flexibility to fund small business enterprises.

The bill was the subject of a hearing in the Securities Subcommittee last week. At the hearing, small business representatives and other experts testified in support of the proposed legislation, although they urged us to go farther in addressing the current problems facing small businesses seeking to raise capital. These experts have offered additional recommendations, as we have begun to examine their proposals as well.

My colleagues and I are introducing the legislation today, however, so that we can start the congressional debate on these issues immediately. While some may not agree with everything in the bill, and other believe it should go farther in certain areas, I believe we all agree that if there are steps we can take this year to help small businesses in their efforts to raise capital, we should make every effort to do so.

As we discussed at last week's hearing, the legislation, and the SEC's proposed rules, are highly technical. But the problems they seek to address are not hard to understand. In my part of the country, and in my State, we have been living with them for more than 3 years.

The New England region has been suffering from the longest and hardest recession since the Great Depression of the 1930's. In Connecticut alone, we have lost 165,000 jobs since February 1989.

According to Dun and Bradstreet, business failure in Connecticut last year were up 106 percent over 1990.

The people behind these statistics make the case far better than any numbers, compelling though they may be: Laborers; construction workers; clerical employees; mid-level managers; financial services employees; and small business owners and workers—people have lost their jobs, their businesses, and, in many cases, their homes and their way of life as well.

We are facing a tragedy of enormous proportions, severely deepened by the credit crunch. When banks cannot lend, businesses cannot grow. Good, sound businesses in my State have had to forego opportunities for expansion and for job creation, simply because the capital was not available. Others have had to shrink their operations and lay off good workers; still others have gone bankrupt.

This problem has been especially acute for small businesses, which traditionally have relied on bank loans for their financing needs. Small business has been the primary source of economic growth and job creation in this country in the past. We cannot ignore their hardships today. We simply must look for ways to help these small firms get the capital they need to grow and prosper and put people back to work.

Over the past several years, we have tried one approach after another to deal with the needs of small business in the credit crunch environment. Last year, we developed the Small Business Recovery Act, which would have strengthened the capital positions of small banks by providing SBA loan guarantees for a portion of the value of a new stock issue. We hoped that by increasing the lending power of small banks we could begin to address the problems of small businesses gaining access to bank credit. The SBA opposed it, however, and some of my colleagues opposed it as well. We were unable to move the bill.

The Small Business Incentive Act provides another approach: Giving small businesses better access to the public capital markets and making it easier for mutual funds, venture capital firms and other investors to channel money to small businesses.

This is an extremely important effort. It obviously is not a panacea for the problems faced by small businesses. But the legislation we are introducing today costs taxpayers nothing. Indeed, it is intended to lower the costs of doing business, and, ultimately, lower costs to consumers, with no additional costs to the taxpayer.

However, we must, of course, be concerned about the possible costs to investors. Some of the disclosure and other provisions of current law designed to protect investors would be modified by this legislation, and we have talked with the SEC about the critical need for balance in this area. In my view, the disclosure and other requirements of the Federal securities laws promote investor confidence. They help keep businesses honest. They encourage competition, because businesses are confident that they enter a market where everyone plays by the same rules. In short, good regulations just like good law enforcement, are good for business. We must be careful that in our efforts to help small businesses, we also preserve the vital investor protection measures that have made our securities markets strong and efficient.

At the same time, we certainly do not need disclosure documents and registration requirements that are so onerous that they cost hundreds of thousands of dollars in legal and other fees for small businesses—and are so complicated that they serve absolutely no useful purpose for the investors we are trying to protect. We don't need more disclosure—let's have less in terms of volume—but better disclosure.

I believe this is what the SEC is trying to achieve with its proposals. In the coming weeks, we will examine further the legislation we are introducing today to determine whether it accomplishes the goal of making the disclosure and other requirements work better for everyone—for small businesses and investors as well.

I would add here that the States have been extremely creative in developing alternatives to the traditional disclosure documents. Many States have taken it one step further, and have been working actively with small businesses and securities firms in their efforts to tap the public capital markets. My State of Connecticut recently adopted what is known as the "SCOR" system, the Small Corporate Offering Registration Program, which provides simplified State disclosure requirements for small offering.

Mr. President, let me close by urging my colleagues to carefully consider the legislation we are introducing today. My colleagues and I, together with the SEC and the small business community, will work over the coming weeks to determine whether the legislation proposed by the SEC is adequate, or whether additional amendments are necessary to further facilitate small business access to capital.

I ask unanimous consent to include in the RECORD a letter from SEC Chairman Richard Breeden, transmitting the legislative proposal, as well as a copy of the bill, a section-by-section analysis of the bill, and a memorandum from the SEC further explaining the legislation.

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

S. 2518

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 "Small Business Incentive Act of 1992".

TITLE I—AMENDMENT TO THE SECURITIES ACT OF 1933

SEC. 101. EXEMPTED SECURITIES.

Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking "$5,000,000" and inserting "$10,000,000".

TITLE II—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

SEC. 201. EXCLUSION FROM DEFINITION OF INVESTMENT COMPANY.

Section 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(7)) is amended to read as follows:

"(7) Any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, except that such issuer shall be deemed to be an investment company for purposes of the limitations set forth in section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by a registered investment company and the sale of any security issued by a registered open-end investment company to any such issuer.".

SEC. 202. DEFINITION OF QUALIFIED PURCHASER.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following new paragraph:

"(51) 'Qualified purchaser' means any person whom the Commission, by rule or regulation, has determined does not need the protections of this title. The Commission's determination shall include consideration of a person's—

"(A) financial sophistication;

"(B) net worth;

"(C) knowledge of and experience in financial matters;

"(D) amount of assets owned or under management;

"(E) relationship with an issuer; or

"(F) such other factors as the Commission may determine to be consistent with the purpose of this paragraph.".

SEC. 203. BENEFICIAL OWNERSHIP OF SECURITIES.

Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)) is amended—

(1) in the first sentence, by striking the period and inserting ", except that such issuer shall be deemed to be an investment company for purposes of the limitations set forth in section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by a registered investment company and the sale of any security issued by a registered open-end investment company to any such issuer.";

(2) in subparagraph (A)—

(A) by inserting "and the company is or, but for the exceptions set forth in this paragraph and paragraph (7), would be an investment company," after "voting securities of the issuer,"; and

(B) by striking "unless, as of the date" and all that follows the end of subparagraph (A) and inserting a period.

SEC. 204. DEFINITION OF INVESTMENT SECURITIES.

Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) is amended in the last sentence by inserting before the period "or which are excluded from the definition of an investment company solely by virtue of section 3(c)(1)".

SEC. 205. ADDITIONAL INVESTMENT COMPANY EXEMPTION.

Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)) is amended by adding at the end the following new paragraph:

"(5)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which it is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, primarily in that State if—

"(i) the organizational documents of such company state that the purpose of the company is limited to providing financial or managerial assistance to enterprises doing business, or proposing to do business, primarily in that State;

"(ii) immediately following each sale of the securities of such company by the company or any underwriter for the company, not less than 80 percent of the company's securities being offered in such sale, on a class-by-class basis, are held by persons who reside or have a substantial business presence in that State;

"(iii) the securities of such company are sold, or proposed to be sold, by the company or any underwriter for the company, solely to accredited investors, as defined in section 2(15) of the Securities Act of 1933, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

"(iv) the company does not purchase any security issued by an investment company, as defined in section 3, or by any company that would be an investment company except for the exclusions from the definition of investment company in section 3(c), other than—

"(I) any security that is rated investment grade by at least 1 nationally recognized statistical rating organization; or

"(II) any security issued by a registered open-end investment company that is required by its investment policies to invest at least 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

"(B) Notwithstanding the exemption provided in this paragraph, the provisions of section 9 (and, to the extent necessary to enforce such provisions, sections 38 through 51) of this title shall apply to a company described in this paragraph as if the company were an investment company registered under this title.

"(C) Any company proposing to rely on the exemption provided in this paragraph shall file with the Commission a notification stating that it intends to do so, in such form and manner as the Commission may by rule prescribe.

"(D) Any company meeting the requirements of this paragraph may rely on the exemption provided herein immediately upon filing with the Commission the notification required by subparagraph (C), unless the Commission determines by order that such company's reliance is not in the public interest or consistent with the protection of investors.

"(E) The exemption provided pursuant to this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.".

SEC. 206. CLOSED-END INVESTMENT COMPANY EXEMPTION.

Section 6(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking "$100,000" and inserting "$10,000,000, or such other amount as the Commission may set by rule, regulation, or order".

SEC. 207. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.

Section 2(a)(46)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

(1) in clause (ii), by striking "or" at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following:

"(iii) it has total assets of not more than $4,000,000, and capital and surplus (shareholders equity less retained earnings) in excess of $2,000,000, except that the Commission may adjust such figures by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or".

SEC. 208. DEFINITION OF BUSINESS DEVELOPMENT COMPANY.

Section 2(a)(48)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by inserting before the semicolon at the end the following: ", and provided further that a business development company need not make available significant managerial assistance with respect to any company described in section 55(a)(7) or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title".

SEC. 209. ACQUISITION OF ASSETS BY BUSINESS DEVELOPMENT COMPANIES.

Section 55(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-54(a)) is amended—

(1) by striking "(6)" the first time it appears and inserting "(7)";

(2) by striking "(7)" the first 2 times such figure appears and inserting "(8)";

(3) in subparagraph (1)(A)—

(A) by striking ", or from any person" and inserting ", from any person"; and

(B) by inserting before the semicolon ", or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors";

(4) in paragraph (6), by striking "and" at the end;

(5) by redesignating paragraph (7) as paragraph (8); and

(6) by inserting after paragraph (6) the following:

"(7) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 2(a)(46)(C)(iii); and".

SEC. 210. CAPITAL STRUCTURE AMENDMENTS.

Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-60(a)) is amended—

(1) in paragraph (2), by striking "if such business development company" and all that follows through the end of paragraph (2) and inserting a period; and

(2) in paragraph (3)(A)—

(A) by striking "senior securities representing indebtedness accompanied by";

(B) inserting "either alone or accompanied by securities," after "of such company,"; and

(C) in clause (ii), by striking "senior".

U.S. SECURITIES AND EXCHANGE COMMISSION.

Washington, DC, March 20, 1992.

Hon. CHRISTOPHER J. DODD,

Chairman, Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Securities and Exchange Commission, I am pleased to submit for consideration by Congress a legislative proposal entitled the "Small Business Incentive Act of 1992," which is enclosed.

The availability of capital is particularly critical for millions of small American businesses as they seek to develop new products, expand their facilities and add employees. In recent years, the financing available to small businesses from traditional sources like banks and venture capital firms appears to have fallen short of the needs of small businesses. At the same time, many costs for small businesses, particularly those caused by regulation, have grown. The combination of these trends has resulted in less vitality in the small business sector, which is the traditional backbone of the U.S. economy.

The proposed legislation would allow the Commission to increase the size of the small offerings that could be exempt from registration under Section 3(b) of the Securities Act of 1933 from $5 million to $10 million. This change would permit the Commission to facilitate capital-raising by small businesses in a manner consistent with the protection of investors. The Commission has exercised its current authority under Section 3(b) to permit small public offerings under the Commission's Regulation. A to be made without registration and without the automatic imposition of the continuous reporting obligation under the Securities Exchange Act of 1934. At the same time, Regulation A assures that investors receive a simplified offering circular that has been reviewed by the SEC. The Commission has recently proposed for public comment an increase in the annual permissible amount of offerings under Regulation A to the full $5 million authorized by current law. Any further flexibility to encourage simplified offerings of securities by small businesses will require a change in law as included in our proposed legislation.

The legislation would also make changes to the Investment Company Act of 1940 in a manner designed to make it easier to form pools of investment capital that could be available to fund small business development. The Commission believes that these proposed changes would help create or expand sources of small business financing without creating the type of risks to public investors that the Investment Company Act was originally designed to address.

Finally, the legislation would amend some of the provisions of the Investment Company Act for Business Development Companies ("BDCs"). BDCs are a special type of public investment company investing in, and often providing managerial assistance to, small businesses. The proposed legislation should encourage more public investment in BDCs and more investment by BDCs in small businesses. It would not, however, remove or alter the basic Securities Act and Investment Company Act measures for the protection of investors in BDCs.

The Commission believes this legislative proposal would make a significant contribution to the simplification of the securities laws applicable to small businesses without endangering the protection of investors. By expanding the availability of capital for small businesses and reducing the costs of securities offerings by small firms, the Small Business Incentive Act would encourage growth in the small business sector that has traditionally provided the majority of new jobs and the core of U.S. economic vitality.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this legislative proposal.

Thank you for your consideration.

Sincerely,

RICHARD C. BREEDEN,
Chairman.

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION IN SUPPORT OF THE SMALL BUSINESS INCENTIVE ACT OF 1992

I. INTRODUCTION

The Commission seeks enactment of the attached legislation, which would amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others by removing regulatory constraints that are unnecessary for investor protection. The proposed legislation would increase the statutory limitation for exempted offerings under the Securities Act, and would amend the Investment Company Act with respect to four types of excepted or exempt investment companies that play a critical role in capital formation for small businesses. The legislation also would lessen certain restrictions on the formation and operation of business development companies under the Investment Company Act. These proposals are in furtherance of the directive in the Omnibus Small Business Capital Formation Act of 1980 for the Commission to reduce regulatory burdens on small businesses.

Section 101 of the legislation would increase the offering limitation for exempted offerings under section 3(b) of the Securities Act to $10 million. The proposal would enhance the Commission's efforts to reduce regulatory burdens on small businesses, consistent with the protection of investors.

Section 201 of the legislation would create a new "qualified purchaser" exception from regulation under the Investment Company Act for investment pools whose securities are held by certain highly sophisticated investors. Section 202 of the bill would give the Commission the authority to define by rule those investors that would be eligible to participate in the new "qualified purchaser" pools. The new exception is intended as an alternative to the existing, more narrow exception under section 3(c)(1) of the Investment Company Act, which currently exempts venture capital funds and other pooled investment vehicles whose operations and activities are essentially of a private nature and thus do not warrant federal regulation.

Section 203 would amend section 3(c)(1) itself to facilitate participation in "private" investment companies by corporate investors and registered investment companies. Section 204 would modify section 3(a)(3) to prevent companies from avoiding regulation under the Act by creating subsidiaries that meet the requirements of amended section 3(c)(1).

Section 205 would amend section 6(a) of the Investment Company Act by adding a new section 6(a)(5) to create an exemption for certain qualified business and industrial development companies.

Section 206 would amend section 6(d)(1) of the Investment Company Act. Section 6(d)(1) currently provides that the Commission may exempt certain intrastate closed-end investment companies from any or all of the provisions of the Act. The section today limits such exemptions to companies that do not receive more than $100,000 from the sale of all of their outstanding securities and sell their securities solely through intrastate offerings. The amendment would increase the maximum proceeds that a company may receive from the sale of all of its outstanding securities to $10 million or such other amount as the Commission may determine by rule, regulation, or order.

Section 207 would amend section 2(a)(46) of the Investment Company Act to define a new class of eligible portfolio company to include any company which does not have total as-

sets in excess of $4 million and capital and surplus (shareholders equity less retained earnings) in excess of $2 million. Section 207 would also authorize the Commission to adjust these amounts through rule or order to account for changes in one or more generally accepted indices or other indicators for small business.

Section 208 would amend section 2(a)(48) of the Investment Company Act to provide that a business development company is not required to make available significant managerial assistance to any company which falls within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii), or any company that meets such other criteria as the Commission may by rule or order establish as consistent with investor protection.

Section 209 would amend section 55 of the Investment Company Act to bring securities of companies that fall within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii) within the list of permissible investments. Section 209 also would amend section 55(a)(1)(A) of the Investment Company Act to permit a business development company to acquire the securities of an eligible portfolio company from persons other than the eligible portfolio company or its affiliated persons subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Section 210 would amend Section 61(a)(2) of the Investment Company Act of 1940 to permit a business development company to issue, without restriction, more than one class of debt securities. Section 210 also would amend section 61(a)(3)(A) to permit a business development company to issue warrants, options, or rights to subscribe or convert to voting securities, under certain conditions, either alone or accompanied by debt or other securities.

II. THE COMMISSION'S PROPOSED LEGISLATION

A. Title I—Amendment to the Securities Act of 1933

Section 3(b) of the Securities Act authorizes the Commission to exempt certain classes of securities from the registration requirements of that Act if their total offering price to the public does not exceed $5 million. As originally enacted in 1933, section 3(b) contained a $100,000 offering limit. According to its legislative history, the purpose of section 3(b) is to expedite the raising of capital for the commencement or expansion of small business enterprises.[1]

Section 3(b) has been amended on four occasions since its original enactment in order to raise the offering limitation from $100,000 to its current level of $5 million. In 1945, from $100,000 to $300,000; in 1970 from $300,000 to $500,000; in May, 1978 from $500,000 to $1.5 million; in October, 1978 from $1.5 million to $2 million; and in 1980 from $2 million to $5 million.[2] The principal purpose of these amendments was to compensate for increases in costs to small businesses. The increases were also made to encourage underwriters to participate in offerings by small business issuers. As underwriters typically charge a percentage of the total offering amount, a small offering may not be as attractive to underwriters as a large offering. Increases in the offering limitations were therefore intended to make exempt offerings more attractive to underwriters and to enhance small issuer access to underwriters.

The foregoing reasons, which justified prior amendments to the section 3(b) offering limitation, also serve as the basis for the proposal to increase the limit to $10 million. As the Commission has recently proposed to extend its rules to the section 3(b) statutory limit, an increase in the statutory ceiling to $10 million would provide the Commission with flexibility in the future and free the Committee of the need to legislate on a frequent basis in the future. Within the proposed limit, the Commission could increase the offering limitation for small business issuers as well as business development companies, which invest in small businesses.

B. Title II—Amendments to the Investment Company Act of 1940

1. Legislation Creating a New "Qualified Purchaser" Exception from Regulation under the Investment Company Act

Section 3(c)(1) of the Investment Company Act generally excepts from the definition of investment company any issuer that does not have more than 100 investors and does not engage or propose to engage in a public offering. Currently, a wide variety of investment pools rely on the section 3(c)(1) exception. These pools range from small groups of investors acting as "investment clubs" to innovative investment vehicles well-suited for sophisticated investors. Venture capital funds are section 3(c)(1) issuers that are particularly critical in providing capital to smaller businesses. Too often, however, large-scale capital participation by sophisticated investors in venture capital funds and other private investment companies is frustrated by the requirements of section 3(c)(1).

To eliminate unnecessary constraints, a new "qualified purchaser" exception is warranted for investors who are able to accept the risks typically associated with investing in smaller enterprises about which little information is publicly available. The new provision would except any company all of whose security holders meet objective standards of financial sophistication. There would be no prohibition on public offerings nor a limit on the number of investors. As an alternative to the more narrow exception provided under section 3(c)(1), the proposed qualified purchaser exception is intended to encourage participation in venture capital funds and other vehicles by investors who do not need the protection of the Investment Company Act's regulatory structure, thereby increasing the capital available for small business as well as larger concerns.

The legislation would create a new section 3(c)(7) of the Investment Company Act to read as follows:

"(7) Any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers. Such issuer nonetheless is deemed to be an investment company for purposes of the limitations set forth in section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company, and the sale of any security issued by any registered open-end investment company to any such issuer."

In addition, to implement the new exception, the legislation would amend section 2(a) of the Act by adding the following new subparagraph (51):

"(51) Qualified purchaser means any person who the Commission, by rule or regulation, shall have determined not to need the protections of this title on the basis of such factors as financial sophistication, net worth, knowledge and experience in financial matters, amount of assets owned or under management, relationship with an issuer, or such other factors as the Commission may determine to be within the intent of the definition."

Proposed section 3(c)(7) would except from regulation under the Investment Company Act any issuer whose securities are beneficially owned exclusively by one or more persons who, at the time of acquisition, are "qualified purchasers." The new exception is premised on the theory that "qualified purchasers" do not need the Act's protections because they are capable of monitoring such matters as management fees, transactions with affiliates, governance, investment risk, and leverage.[3] In addition, the new exception would enable issuers to realize the benefits associated with public offerings, including greater access to capital markets and increased liquidity for their securities.[4]

Proposed section 2(a)(51) would authorize the Commission to define by rule those investors that constitute "qualified purchasers." This rulemaking authority would provide flexibility to respond to changing conditions and the benefit of the public comment process. The Commission's determinations would be based on factors such as financial sophistication, net worth, knowledge and experience in financial matters, amount of assets owned or under management, relationship with the issuer, or such other factors as the Commission determines to be within the intent of the section.[5]

The Commission anticipates that, at least initially, the definition of "qualified institutional buyer" in rule 144A under the Securities Act of 1933[6] would represent an appropriate standard for determining the level of sophistication for those institutions investing in proposed section 3(c)(7) issuers. Under rule 144A, a qualified institutional buyer generally includes institutional investors, such as employee benefit plans, insurance companies, banks, and investment companies, that own or invest on a discretionary basis at least $100 million in securities. In addition, the Commission believes that it would be appropriate to allow natural persons to invest in the new section 3(c)(7) pools, so long as those persons possess a high degree of sophistication. As in the case of their institutional counterparts, such natural persons would be fully capable of evaluating and accepting the level of risk associated with the new section 3(c)(7) pools. In formulating the class of investors eligible to invest in proposed section 3(c)(7) issuers, the Commission would be particularly sensitive to the risks presented by unregulated investment pools and the breadth of the proposed section 3(c)(7) exception, which would not otherwise be limited.

The new exception would not limit investments by registered investment companies in section 3(c)(7) issuers as is currently the case for certain excepted issuers relying on section 3(c)(1). Investments in registered investment companies by section 3(c)(7) issuers, however, would be restricted under section 12(d)(1) of the Investment Company Act[7] for the same reasons supporting this approach for all section 3(c)(1) issuers as discussed below. Finally, an issuer qualifying for the new section 3(c)(7) exclusion nonetheless could register under the Investment Company Act if it chose to forego the exclusion.

2. Legislation Amending Sections 3(c)(1) and 3(a)(3) of the Act

Section 3(c)(1) of the Investment Company Act represents a viable and important exception for private investment pools. Certain aspects of section 3(c)(1), however, should be improved.

Footnotes at end of article.

To qualify for the section 3(c)(1) exception, an issuer generally may not have more than 100 investors and may not engage in a public offering. These two requirements are intended to provide a means for determining the existence of a public investment company for which regulation under the Act is clearly justified.

Section 3(c)(1) also has a two-part attribution text, designed to prevent circumvention of the 100 investor limit. This test, which may require a prospective section 3(c)(1) issuer to "look through" its security holders to their underlying investors, is best illustrated by an example. Assume Company B is seeking to rely on section 3(c)(1). If Company A beneficially owns ten percent or more of Company B's voting securities, Company A's security holders are counted individually as security holders of Company B (part I of the attribution provision), unless Company A has no more than ten percent of its assets in securities of section 3(c)(1) issuers (part II).

The attribution test is also pivotal in determining which section 3(c)(1) issuers are deemed to be investment companies for purposes of the "fund of fund" investment limitations of section 12(d)(1) of the Act. Section 12(d)(1) is intended to restrict the pyramiding of funds by limiting the purchase of registered investment company securities by any investment company (whether or not registered) and the purchase of securities of any investment company (whether or not registered) by registered funds.[8] Unlimited pyramiding raises public policy concerns because, for example, a fund acquiring another fund's securities could exercise undue influence over that fund or disrupt its orderly management through the threat of redemption. Such investments may also result in a layering of costs to investors through duplicate advisory fees, administrative expenses, and sales charges.

Under current section 3(c)(1), only those issuers that would be investment companies but for the second part of that section's attribution provision (i.e., they have large security holders but these holders do not have more than ten percent of their assets in securities of section 3(c)(1) issuers) are subject to section 12(d)(1)'s restrictions on inter-fund investments. Pyramiding investments involving other section 3(c)(1) issuers and investment companies are not subject to section 12(d)(1).

The Commission believes that the current attribution test of section 3(c)(1) is unnecessarily broad. Investments in section 3(c)(1) issuers by companies that are not themselves investment companies generally do not, standing alone, raise the concerns respecting the layering of intermediaries that the attribution test is intended to address. In fact, the attribution provision may result in the counting of the security holders of corporate investors who do not have a significant economic interest in a section 3(c)(1) issuer's performance.

The proposed legislation would simplify the attribution test of section 3(c)(1). Under the proposal, if an intermediate investing entity (i.e., Company A) is not an investment company subject to regulation under the Act, or is itself not relying on section 3(c)(1) or the proposed qualified purchaser exception, the issuer (i.e., Company B) would not be required to consider the entity's security holders in applying the 100 investor limit.

In connection with this change, the legislation would also amend section 3(a)(3) of the Act to provide that securities of majority-owned subsidiaries that would be investment companies but for amended section 3(c)(1) would not be excluded from the definition of "investment securities" under section 3(a)(3). This amendment is intended to preclude a company that would itself fall within the definition of an investment company under section 3(a)(3) from avoiding regulation under the Act by establishing a section 3(c)(1) subsidiary.[9]

The Commission also believes that the investment restrictions of section 12(d)(1) as applied under current section 3(c)(1) should be revised. Limitations on the ability of all section 3(c)(1) issuers to invest in registered investment companies are necessary to protect the public shareholders of registered funds. Section 3(c)(1) issuers, excepted from regulation under the Act, could acquire controlling interests and exert undue influence over registered investment companies, disrupting their portfolio management through the threat of redemption.

As applied to investments by registered investment companies, on the other hand, section 12(d)(1) unduly restricts the ability of a registered fund to invest in a section 3(c)(1). issuer.[10] The Commission believes any anti-pyramiding concerns are minimized by the other safeguards under the Act governing such investments, such as the Act's provisions regarding conflicts of interest and breaches of an adviser's fiduciary duty. Moreover, as a result of the proposed legislation as noted below, a registered fund's investment would be limited to ten percent of any one section 3(c)(1) issuer.

Accordingly, the proposed legislation would revise the "fund of fund" investment restrictions of section 12(d)(1) as applied to private investment companies. As revised, section 12(d)(1) would apply to any private investment company's purchase of the voting securities of a registered investment company, whether open-end or closed-end;[11] it would no longer apply to a registered fund's purchase of private investment company securities. The combined effect of the proposed changes to the application of section 12(d)(1) and the attribution provision would be to raise the limit on investment company purchases of section 3(c)(1) issuers from three percent to ten percent of any one such issuer.[12] Based on the general size of portfolio positions taken by small capitalization and aggressive growth funds and of private investment companies, the Commission believes that this increase is sufficient to accommodate registered investment companies seeking to invest in section 3(c)(1) issuers.

3. Legislation to Create a New Exemption from Regulation under the Investment Company Act for Qualified Business and Industrial Development Companies that are Organized to Provide Assistance to Businesses and Whose Operations are Subject to State Regulation

Business and industrial development companies (or "BIDCOs") are organized for the express purpose of providing financing, and in some cases managerial assistance, to projects or concerns located within a particular state. Such companies typically are licensed by a state and regulated under state law.[13] Because of their extensive investments in securities, these companies frequently fall within the definition of an investment company under section 3(a) of the Investment Companies Act. Therefore, unless an exemption or an exception is available, they are subject to stringent regulation at both the state and federal level.

While substantive regulation at both the state and federal level may increase investor protection, it also increases the operational costs of these companies. These additional costs have a significant adverse effect even on companies able to coordinate large, interstate offerings. BIDCOs designed to stimulate local economies typically operate on a smaller scale. For these companies, the cost of dual regulation can exhaust a significant percentage of their capital and human resources.

The Commission has granted a number of individual exemptive orders from the provisions of the Investment Company Act with regard to some BIDCOs.[14] The time and money involved in applying for such exemptions, however, may discourage would-be sponsors of small BIDCOs. An exemption from regulation under the Act for BIDCOs would eliminate unnecessary federal obstacles to the organization and operation of these vehicles.

Section 204 of the bill would amend section 6(a) of the Act by adding subparagraph (5) as follows:

"(5)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which it is organized under a statute governing entities that provide financial and/or managerial assistance to enterprises doing business, or proposing to do business, primarily in that State, provided that

"(i) the organizational documents of such company state that the purpose of the company is limited to providing financial and/or managerial assistance to enterprises doing business, or proposing to do business, primarily in that State;

"(ii) immediately following each sale of the securities of such company by the company or any underwriter therefor, not less than 80 per centum of the company's securities being offered in such sale, calculated on a class-by-class basis, are held by persons who reside, or have a substantial business presence, in that State;

"(iii) the securities of such company are sold, or proposed to be sold, by the company or any underwriter therefor, solely to accredited investors, as defined in section 2(15) of the Securities Act of 1933, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

"(iv) the company does not purchase any security issued by an investment company, as defined in section 3 of this title, or by any company which would be an investment company except for the exclusion from the definition of investment company in section 3(c) of this title, other than

"(aa) any security that is rated investment grade by at least one nationally recognized statistical rating organization; or

"(bb) any security issued by a registered open-end investment company that is required by its investment policies to invest at least 65 per centum of its total assets in securities described in subsection (aa) above or that are determined by such registered open-end investment company to be comparable in quality to securities described in subsection (aa) above.

"(B) Notwithstanding the exemption provided in this section, the provisions of section 9 (and, to the extent necessary to enforce such provisions, sections 38 through 51) of this title shall apply as if the company were an investment company registered under this title.

"(C) Any company proposing to rely on the exemption provided in this section shall file with the Commission a notification stating that it intends to rely on the exemption, in

such form and manner as the Commission may be rule prescribe.

"(D) Any company meeting the requirements of this section shall be entitled to rely on the exemption provided herein immediately upon filing with the Commission the notification described in subsection (C) above, unless and except insofar as the Commission determines by order that such company's reliance is not in the public interest or consistent with the protection of investors.

"(E) The exemption provided pursuant to this section may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determined are necessary or appropriate in the public interest or for the protection of investors."

The proposed legislation is premised upon states having a strong interest in protecting investors in companies of this type and, accordingly, the new exemption would be available only to those companies in which a state has a strong regulatory interest. The individual states are best situated to examine the needs of their residents and to determine the structure and operations of entities intended to meet the requirements of local business for capital formation, while also protecting state residents from abusive practices in the investment industry.

A company seeking to rely on the proposed exemption would be required to be organized in the state where it is regulated. In addition, proposed section 6(a)(A)(i) would emphasize the intent of the exemption by requiring that the organizational documents (such as the articles of incorporation) of companies relying on the exemption state that the purpose of the company is limited to providing financial and/or managerial assistance to enterprises doing business, or proposing to do business, primarily in the state under which laws the company is regulated.

Proposed section 6(a)(5)(A)(ii) provides that immediately following each sale of the company's securities by the company or any underwriter therefor, not less than eighty percent of the company's securities being offered in such sale, calculated on a class-by-class basis, must be held by persons who reside, or who have a substantial business presence, in the state where the company is regulated. The eighty per cent requirement provides flexibility for companies located near state borders while insuring the states will have a strong interest in regulating the companies' operations. While the residency requirement would apply to each new offering, it would not apply with respect to transactions made on the secondary market. The Commission anticipates that the percentage of securities owned by persons residing or with a substantial business presence in the state where the company is regulated will vary from time to time due to resales of the securities, changes in residency of the holders of the securities, and transfers of the securities through operation of law.

Proposed section 6(a)(5)(A)(iii) would limit the exemption to those companies that offer their securities solely to accredited investors, as defined in section 2(15) of the Securities Act of 1933, and Commission rules thereunder, or to such other persons as the Commission may permit. The section would not, however, preclude the sale of securities through a public offering.

The Commission believes that the proposed eligibility stated for section 6(a)(5) should be different from that applicable to the proposed exemption for qualified purchasers as defined in proposed section 2(a)(51). The qualified purchaser exception focuses solely on the nature of the purchaser. In contrast, proposed section 6(a)(5) is limited to a specific type of issuer and relies on state law to provide alternative regulatory protections. Companies relying on section 6(a)(5) are likely to be smaller in scale and more local in operation than most entities relying on the qualified purchaser exception.

Proposed section 6(a)(5)(A)(iv) would prohibit exempt companies from purchasing securities issued by investment companies, other than securities rated investment grade by at least one nationally recognized statistical rating organization or securities issued by registered open-end investment companies that invest at least sixty-five percent of their assets in such securities or similar obligations. The Commission expects that exempt companies would make long-term investments solely in companies that are primarily engaged in businesses other than investing, reinvesting, owning, holding, or trading in securities. Thus, except as noted above, an exempt company could not invest in any issuer that, but for an exclusion in section 3(c) of the Investment Company Act, would meet the definition of investment company. To provide exempt companies with the flexibility to invest capital not immediately needed for investment in operating companies, the proposal would permit the purchase of investment grade securities regardless of whether the issuer is an investment company, and also would permit the purchase of securities issued by registered open-end investment companies that invest primarily in investment grade securities or comparable securities.

Proposed section 6(a)(5)(B) provides that the provisions of section 9 of the Investment Company Act would apply with respect to the exempt company as if it were a registered investment company. Section 9 of the Act provides that certain activities disqualify a person, and concomitantly, certain related persons, from acting in specified capacities on behalf of investment companies. Section 9 is based on the determination that certain persons, because of securities-related violations, should be disqualified from any involvement with registered investment companies absent an order of the Commission allowing such involvement. Section 6(a)(5)(B) would ensure that the the proposed exemption for BIDCOs does not provide a safe haven for persons prohibited from associating with investment companies. Certain administrative sections of the Act also would apply to ensure that the Commission has enforcement power over any violations of the section.

Proposed section 6(a)(5)(C) requires companies to file with the Commission a notification of the company's intent to rely on the exemption. The Commission intends to promulgate rules setting forth the minimum information that must be included in the notification. It is anticipated that the notification would include at least the following information: the company's name, address, and telephone number; and a list of the company's officers and directors.

Pursuant to proposed 6(a)(5)(D), although the exemption would become automatically available upon filing the required notification, the Commission may institute proceedings to determine whether a company's reliance on the exemption is not in the public interest or consistent with the protection of investors. This authority would allow the Commission to deny the exemption in circumstances where, for example, the Commission is in possession of information relating to the bona fides of the entity or its sponsors.

Proposed section 6(a)(5)(E) provides that the exemption may be subject to such additional terms and conditions and the Commission may by rule, regulation, or order determine necessary for the protection of investors. This authority would allow the Commission, for example, to require BIDCOs selling securities outside the state in which they are organized to provide certain information to regulators in those other states.

4. Legislation to Amend Section 6(d)(1) of the Investment Company Act to Increase the Aggregate Proceeds Raised by Closed-End Funds Engaged in Intrastate Offerings

Section 6(d) of the Investment Company Act currently provides that the Commission shall exempt a closed-end investment company from any or all of the provisions of the Act, subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, provided that the aggregate amount of proceeds permitted to be received from offerings of the company's securities is not more than $100,000, and provided further that the public sale of the company's securities by the company or any underwriter therefor is made solely through intrastate offerings. In contrast to proposed section 6(a)(5), an exemption under section 6(d) is not automatic in that a company must apply for an exemption from all or some of the provisions of this Act.[15]

The $100,000 maximum aggregate amount of proceeds specified in section 6(d)(1) has remained unchanged since 1940. This amount should be increased to reflect more accurately current financial requirements of companies providing capital to small businesses and others. In addition, in order to respond to changing financial conditions, the Commission should have the authority to adjust the ceiling by rule or order.

Section 206 of the bill would amend section 6(d)(1) of the Investment Company Act to increase the aggregate amount of proceeds that may be raised in intrastate offerings by closed-end funds to $10 million or such other amount as the Commission may set by rule or order.

Under the proposed legislation, the Commission would continue to review individual applications to determine whether an exemption is consistent with the protection of investors, despite the absence of specific state regulation. Where appropriate, the Commission would continue to grant the requested exemption under section 6(d), subject to compliance with specified provisions of the Act, and such other terms and conditions as are necessary or appropriate in the public interest or for the protection of investors.

5. Legislation Amending Section 2(a)(46) of the Investment Company Act

Section 2(a)(46) of the Investment Company Act defines eligible portfolio company to include companies that are not eligible for margin under Federal Reserve Board regulations, are controlled by a business development company, or that meet such other criteria as the Commission may establish by rule. The Commission believes that this definition may be difficult to apply and may impede investments in some small businesses. The proposed legislation would amend section 2(a)(46) of the Investment Company Act to define a new class of eligible portfolio company. It would expand the definition of eligible portfolio company to include any company which does not have total assets in

excess of $4 million and capital and surplus (shareholders equity less retained earnings) in excess of $2 million. It would also authorize the Commission to adjust these amounts through rule or order to account for changes in one or more generally accepted indices or other indicators for small business. The Commission believes that this amendment will provide a bright-line test for small businesses and should result in business development companies investing more assets in small businesses.

6. Legislation Amending Section 2(a)(48) of the Investment Company Act

Section 2(a)(48) of the Investment Company Act requires a business development company to make available significant managerial assistance to all the companies treated by it as satisfying the 70% test in Section 55 of the Act. The Commission believes that this requirement may discourage the flow of capital to very small businesses. The proposed legislation would amend section 2(a)(48) of the Investment Company Act to provide that a business development company is not required to make available significant managerial assistance to any company which falls within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii), or any company that meets such other criteria as the Commission may by rule or order establish consistent with investor protection.

7. Legislation Amending Section 55 of the Investment Company Act

Section 55 of the Investment Company Act prohibits a business development company from making investments unless, at the time an investment is made, at least 70% of its assets (excluding assets necessary to maintain the business, such as office furniture) are represented by, in general, securities of small, developing or financially troubled businesses and liquid assets such as cash, government securities, or short-term high quality debt securities. The Commission believes that securities of very small businesses should specifically be included within the 70% test in section 55. The proposed legislation would therefore, amend section 55 of the Investment Company Act to bring securities of companies that fall within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii) within the 70% test.

Section 55 of the Investment Company Act also requires a business development company to acquire the securities of an eligible portfolio company directly from the portfolio company, or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company. The Commission believes that this requirement is too restrictive, since acquisitions of eligible portfolio company securities from other persons may also benefit the company. The proposed legislation would amend section 55(a)(1)(A) of the Investment Company Act to permit a business development company to acquire the securities of an eligible portfolio company from persons other than the eligible portfolio company or its affiliated persons subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

8. Legislation Amending Section 61(a)(2) and Section 61(a)(3) of the Act

Section 61(a)(2) of the Investment Company Act provides that notwithstanding section 18(c) of the Act,[16] a business development company may issue more than one class of senior debt security if such company does not have any publicly held indebtedness outstanding, there is no intent to publicly distribute any class or debt securities, and all such senior securities are privately held or guaranteed by the Small Business Administration, banks, insurance companies, or other institutional investors. The Commission believes that section 61(a)(2) is too restrictive. Although public investors are not permitted to participate in multiple debt offerings, their equity holdings are affected by the outstanding debt. The proposed legislation would amend section 61(a)(2) to permit a business development company to issue, without restriction, multiple classes of debt. This would further facilitate the flow of capital to small businesses.

Section 61(a)(3)(A) of the Act provides that notwithstanding section 18(d), a business development company may issue senior securities representing indebtedness accompanied by warrants, options, or rights to subscribe or convert to voting securities of such company under certain conditions. Section 18(d) of the Act makes it unlawful for a registered management investment company to issue warrants or rights to subscribe to or purchase the company's securities unless certain conditions are met, including a requirement that they expire no later than 120 days after their issuance. Business development companies are permitted greater flexibility under section 61(a)(3)(A) to issue warrants with expiration dates of up to ten years, but only if the instrument is accompanied by a debt security. The legislative history of section 61(a)(3)(A) is silent regarding the purpose of this limitation and the Commission believes it is not required for investor protection. The proposed legislation would amend section 61(a)(3)(A) to permit a business development company to issue warrants, options, or rights to subscribe or convert to voting securities of such company either on a stand-alone basis or when accompanied by debt or equity securities.

III. CONCLUSION

By raising the statutory limit for exempted offerings under the Securities Act, the proposed legislation would provide the Commission with additional flexibility to increase the offering limitation for small business issuers as well as business development companies. By removing unnecessary regulatory constraints, the legislation would promote the formation of capital for small businesses and others through broader-based participation in excepted and exempted investment pools under the Investment Company Act. It also would remove unnecessary restrictions on the formation and operation of business development companies. The proposed legislation would accomplish these objectives without compromising important investor protections. In view of the costs of unnecessary regulation and the importance of capital formation to the growth and health of our economy, these are important and needed amendments.

FOOTNOTES

[1] See, e.g., 59 Stat. 167 (May 15, 1945); 84 Stat. 1480 (Dec. 19, 1970); Pub. L. No. 95-283 (May 21, 1978); 92 Stat. 962 (Oct. 6, 1978); and Pub. L. No. 96-477 (Oct. 21, 1980).

[2] Id.

[3] The rationale of section 3(c)(7) is not novel. A number of provisions under the federal securities laws are based, in part, on objective criteria concerning the degree of sophistication of investors. See section 4(6) of the Securities Act of 1933 (accredited investors), rule 144A under that Act (17 C.F.R. §230.144A(1991)) (qualified institutional buyers), and rule 205-3 under the Advisers Act of 1940 (17 C.F.R. §230.205-3 (1991)) ("sophisticated" clients).

[4] Issuers relying on proposed section 3(c)(7) would be permitted to engage in public offerings registered under the Securities Act of 1933, so long as their securities are owned only by qualified purchasers.

[5] In defining eligible investors, the Commission could also decide to provide reasonable care defenses similar to those in Regulation D and rule 144A. 17 C.F.R. §§230.501(a) and 230.144A (1991).

[6] Rule 144A provides a non-exclusive safe harbor for resales of unregistered securities. See Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Securities Act Release No. 6862 (Apr. 27, 1990).

[7] See infra note 7.

[8] Section 12(d)(1) prohibits such purchases if, after the purchase, the acquiring company owns (1) more than three percent of the voting stock of the acquired company; (2) securities issued by the acquired company having an aggregate value of more than five percent of the assets of the acquiring company; or (3) securities issued by the acquired company and all other investment companies having an aggregate value of more than ten percent of its assets.

[9] Section 3(a)(3) generally provides that an investment company includes any company with more than 40% of its assets in investment securities. The definition of investment securities under section 3(a)(3) excludes securities issued by majority-owned subsidiaries which are not investment companies; because of the section 3(c)(1) exclusion, the securities of a majority-owned section 3(c)(1) issuer are not investment securities. In light of the proposed change in the attribution provision of section 3(c)(1) and in the absence of the proposed amendment to section 3(a)(3), companies could avoid regulation under the Act by "downstreaming" their investment activities through a section 3(c)(1) subsidiary.

[10] Section 12(d)(1) limits investments by registered funds to no more than three percent of certain section 3(c)(1) issuers. See note 7 and accompanying text.

[11] To cover the other side of transactions open-end funds, section 12(d)(1) also would apply to a registered open-end investment company's sale of its securities to a section 3(c)(1) issuer. The application of section 12(d)(1) to all section 3(c)(1) issuers under the proposed amendments would not affect existing investments by such issuers in registered funds since section 12(d)(1) prohibits only purchases or other acquisitions that cause holdings to exceed the numerical limits in the section.

[12] The revised attribution provision of section 3(c)(1) would count toward the 100 investor limit, without exception, the shareholders of an investment company owning 10% or more of a section 3(c)(1) issuer.

[13] Currently, 45 states have enacted laws regulating such companies. See, e.g., Cal. Fin. Code §§31000-31953 (Deering 1991) (Business and Industrial Development Corporations Law); Tenn. Code Ann. §§45-8-201 to 225) (1991) (Tennessee BIDCO Act); Wash. Rev. Code Ann. §§31.24.010 to 900. (1990) (Washington Industrial Development Corporations).

[14] See, e.g., Indiana Community Business Credit Corporation, Investment Company Act Release Nos. 14528 (May 21, 1985) (Notice) and 14585 (June 18, 1985) (Order); Business and Industrial Development Corporation of Washington, Investment Company Act Release Nos. 7250 (June 28, 1972) (Notice) and 7301 (Jul. 28, 1972) (Order); and Pennsylvania Development Credit Corporation, Investment Company Act Release Nos. 3954 (Apr. 6, 1964) (Notice) and 3965 (Apr. 28, 1964) (Order). Orders issued to BIDCOs have been subject to various conditions, including requirements that the companies be subject to state licensing and regulation and that potential investors be sophisticated in securities matters and capable of understanding the risks involved.

[15] Section 6(d) and proposed section 6(a)(5) would represent alternative exemptions from a substantive perspective as well. If a state does not have a regulatory structure in place for business and industrial development companies, or if such a company cannot otherwise meet the requirements of proposed section 6(a)(5), the Commission may exempt under section 6(d) a proposed intrastate offering from all or part of the Investment Company Act if it determines, after examining the specific proposal, that the exemption is consistent with the protection of investors.

[16] Section 18(c) makes it unlawful for "any registered closed-end investment company to issue or sell any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class of senior security representing indebtedness, or to issue or sell any senior security which is a stock if immediately thereafter

such company will have outstanding more than one class of senior security which is a stock," except under certain conditions.

THE SMALL BUSINESS INCENTIVE ACT OF 1992—SECTION-BY-SECTION ANALYSIS

TITLE I—AMENDMENT TO THE SECURITIES ACT OF 1933

Section 101 would amend section 3(b) of the Securities Act of 1933 by increasing the offering limitation of that section to $10,000,000.

TITLE II—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

Section 201 would add section 3(c)(7) to the Investment Company Act of 1940 to create a new exception from the definition of investment company for investment pools whose securities are held exclusively by qualified purchasers as defined under section 202, discussed below. Under proposed section 3(c)(7), there would be no prohibition on public offerings or a limit on the number of "qualified purchasers" participating in the investment pool. The "fund of funds" investment restrictions of section 12(d)(1) of the Investment Company Act would apply to issuers relying on the exception but only in connection with the purchase of securities issued by registered investment companies. To cover the other side of transactions involving open-end funds, registered open-end investment companies selling their securities to proposed section 3(c)(7) issuers also would be subject to section 12(d)(1).

Section 202 would add a new subparagraph (51) to section 2(a) of the Investment Company Act providing the Commission with the authority to define by rule or regulation the term "qualified purchaser" in connection with the proposed exception for "qualified purchaser" investment pools discussed under section 201, above. Under proposed subparagraph 2(a)(51), regulations defining the term "qualified purchaser" would be based on a determination by the Commission that certain persons do not need the protections of the Investment Company Act on the basis of such factors as financial sophistication, net worth, knowledge and experience in financial matters, amount of assets owned or under management, relationship with an issuer, or such other factors as the Commission determines to be within the intent of the proposed subparagraph.

Section 203 would amend section 3(c)(1) of the Investment Company Act, which excepts investment pools that have no more than 100 investors and do not engage in public offerings. For the purposes of the 100 investor limit as amended, section 3(c)(1) would treat beneficial ownership by a company to be beneficial ownership by one person, unless the company (i) owns ten percent or more of the section 3(c)(1) issuer and (ii) is, or but for the exception under section 3(c)(1) or the proposed exception discussed under section 201 above, would be, an investment company. When both of these two tests are met, beneficial ownership of the section 3(c)(1) issuer would include the holders of the company's outstanding securities (other than short-term paper). This amendment reduces the complexity associated with the way in which the 100 investor limit of section 3(c)(1) currently is calculated. The amendments also would impose the investment restrictions of section 12(d)(1) of the Investment Company Act on all section 3(c)(1) issuers in connection with the purchase of registered investment company securities and in connection with the sale of registered open-end investment company securities to section 3(c)(1) issuers.

Section 204 would amend section 3(a)(3) of the Investment Company Act to include within the definition of investment securities set forth in that section securities of majority-owned subsidiaries that would be investment companies but for the exclusion under section 3(c)(1). The amendment would preclude a company from avoiding regulation under section 3(a)(3) of the Act by establishing a section 3(c)(1) subsidiary.

Section 205 would add section 6(a)(5) to the Investment Company Act to exempt certain business and industrial development companies, or BIDCOs, from regulation under the Act. These companies could not be in the business of issuing redeemable securities and their operations would have to be regulated under a state statute providing for the creation of entities to provide financial and/or managerial assistance to enterprises doing business, or proposing to do business, primarily in that state. Each company would have to be organized in the state where it is regulated and, under proposed subparagraph 6(a)(5)(A)(i), the company's organizational documents would have to state its limited purpose.

Proposed subparagraph 6(a)(5)(A)(ii) would require that at least eighty percent of each class of securities being offered by the company or any underwriter therefor must be held by persons who reside, or who have a substantial business presence, in the state where the company is regulated. While applicable to each new offering, the residency requirement would not apply to transactions made on the secondary market. Pursuant to proposed subparagraph 6(a)(5)(A)(iii), the exemption would be limited to companies that offer their securities solely to accredited investors, as defined in section 2(15) of the Securities Act of 1933, and Commission rules thereunder, or to such other persons as the Commission may permit. The exemption would not preclude the sale of securities through a public offering.

Proposed subparagraph 6(a)(5)(A)(iv) would prohibit companies from purchasing securities issued by investment companies and companies excepted from the definition of investment company by section 3(c), other than securities rated investment grade or securities issued by registered open-end investment companies that invest at least sixty-five percent of their assets in such investment grade or comparable obligations. This provision is intended to provide limited flexibility to invest capital not immediately needed for the company's long-term commitments.

Proposed subparagraph 6(a)(5)(B) provides that the provisions of section 9 of the Investment Company Act would apply to an exempt company as if it were a registered investment company so that the exemption could not be used as a safe haven for persons prohibited from associating with investment companies. Certain administrative sections of the Investment Company Act also would apply to provide the Commission with enforcement power over any violations of section 9.

Under proposed subparagraph 6(a)(5)(C), companies must file with the Commission a notification as prescribed by Commission rule. Although the exemption is available automatically upon filing, proposed subparagraph 6(a)(5)(D) gives the Commission the authority by order to disallow the exemption if it is not in the public interest or consistent with the protection of investors. Under proposed paragraph 6(a)(5)(E), the exemption may be subject to such additional terms and conditions as the Commission may by rule or order determine are necessary for the protection of investors.

Section 206 amends section 6(d)(1) of the Investment Company Act to increase the maximum aggregate amount permitted to be received from intrastate securities offerings of any closed-end investment company to $10,000,000 or such other amount as the Commission may set by rule or order.

Section 207 would amend section 2(a)(46) of the Investment Company Act to define a new class of eligible portfolio company. It would expand the definition of eligible portfolio company to include any company which does not have total assets in excess of $4,000,000. And capital and surplus (shareholders equity less retained earnings) in excess of $2,000,000. It would also authorize the Commission to adjust these amounts through rule or order to account for changes in one or more generally accepted indices or other indicators for small business. Section 2(a)(46) currently defines eligible portfolio company to include companies that are not eligible for margin under Federal Reserve Board regulations, are controlled by a business development company, or that meet such other criteria as the Commission may, by rule, establish. The amendment would permit business development companies to invest in more small businesses thus increasing the flow of capital.

Section 208 would amend section 2(a)(48) of the Investment Company Act to provide that a business development company is not required to make available significant managerial assistance to any company which falls within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii), or any company that meets such other criteria as the Commission may by rule, regulation, or order establish consistent with investor protection. Section 2(a)(48) currently requires a business development company to make available significant managerial assistance to all the companies treated by it as satisfying the 70% test in Section 55 of the Act. The amendment would encourage the flow of capital to very small businesses.

Section 209 would amend section 55 of the Investment Company Act to bring securities of companies that fall within the new definition of eligible portfolio company in section 2(a)(46)(C)(iii) within the 70% test. Section 55 currently prohibits a business development company from making investments unless, at the time an investment is made, at least 70% of its assets (excluding assets necessary to maintain the business, such as office furniture) are represented by, in general, securities of small, developing or financially troubled businesses and liquid assets such as cash, government securities, or short-term high quality debt securities. The amendment would make it clear that a business development company's investment in the new eligible portfolio company securities counts toward the 70% of their assets that must be invested in specific securities.

Section 209 would also amend section 55 of the Investment Company Act of 1940 to permit a business development company to acquire the securities of an eligible portfolio company from persons other than the eligible portfolio company and its affiliated persons subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. Section 55(a)(1)(A) currently requires a business development company to acquire the securities of an eligible portfolio company directly from the portfolio company, or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company. The amendment

would facilitate acquisitions of eligible portfolio company securities from other persons.

Section 210 would amend sections 61(a)(2) and 61(a)(3)(A) of the Investment Company Act. Section 61(a)(2) currently permits a business development company to issue more than one class of debt securities if it does not have any publicly-held indebtedness outstanding, there is no intent to publicly distribute any class of debt securities, and all its debt securities are privately held or guaranteed by the Small Business Administration, banks, insurance companies, or other institutional investors. Section 210 would amend section 61(a)(2) to permit a business development company to issue, without restriction, multiple classes of debt securities.

Section 61(a)(3)(A) of the Investment Company Act currently provides that a business development company may only issue warrants, options, or rights to subscribe or convert to voting securities of such company if accompanied by senior securities representing indebtedness and in accordance with certain conditions. Section 210 would amend section 61(a)(3)(A) to allow a business development company to issue warrants, options, and rights either on a stand-alone basis or accompanied by debt or other securities provided the conditions of that section are met. The amendment would provide business development companies with greater flexibility in their capital structure.●

● Mr. KASTEN. Mr. President, I am pleased to rise today and join Senator DODD as an original cosponsor of the Small Business Incentives Act of 1992. Small businesses play a major role in our Nation's economy. They account for over half of the U.S. gross domestic product. Small businesses are the No. 1 creator of jobs for our workers—this is their most valuable contribution to the economy. Almost two-thirds of U.S. employment growth in recent years can be credited to small business.

As ranking Republican on the Senate Small Business Committee, I have maintained that when our small businesses are hurting, the Nation is hurting as well. We in the Senate need to take steps to ensure the growth of small businesses, and I believe the Small Business Incentives Act of 1992 will do just that.

Small business owners across the country are still feeling the effects of the credit and capital crunch. In the last year alone, the total of outstanding commercial and industrial loans declined around $30 billion.

Some of these small business owners need capital to get their ventures off the ground; others need money to expand their existing operations and hire more workers. There are still other small business owners who run profitable businesses but are being denied access to capital to stay afloat because of the effects of the recession. The result is that jobs are lost or never created. These small business owners and their workers are the ones who will benefit from the proposed bill.

The effort which produced this legislation demonstrates the bipartisan cooperation needed to solve our Nation's economic problems. I am encouraged by this attempt to get at the root problem in our economy by getting more capital to those who can create jobs. Small business is the engine that will pull us out of the recession, and the Small Business Incentives Act will help speed the process.●

Mr. D'AMATO. Mr. President, I have shared with the distinguished chairman of the Securities Subcommittee a deep concern about the impact of the credit crunch on small businesses. Small businesses that traditionally rely on bank loans to meet both short-term and long-term capital needs have been hit the hardest by the credit crunch.

Banks have been increasingly reluctant to lend to small businesses, in part because banks have retreated from the business of lending altogether. The well for credit to entrepreneurs and individuals with small businesses has run dry over the last 18 months. Over the last year and a half, numerous constituents have told me that they have had their loans denied and lines of credit pulled in—frequently in spite of a long-standing relationship with the lender.

Small businesses are the backbone of the U.S. economy. Without adequate access to capital, our small businesses will falter and eventually fail. There will be no incentive for individuals to start up small businesses if they cannot access capital to operate the business. As a result, Americans will be deprived of many of the technological and other advances that are traditionally developed through small businesses.

The recession has starved most small businesses of credit. Until we find a way to get credit to these small businesses, the economy will remain sluggish. Restoring the health of small businesses is integral to leading the economy out of the recession.

The SEC has proposed initiatives in legislation being introduced today by the distinguished chairman of the Securities Subcommittee, the Small Business Incentive Act of 1992. This bill is intended to make the capital markets more accessible to small businesses.

The SEC has developed an impressive series of rules and legislative proposals aimed at making it easier for small businesses to issue securities. The SEC has also worked to enhance the market for the securities of small businesses by removing or easing certain restrictions that presently contribute to the illiquidity of these securities.

I commend the SEC for its efforts to find a way to restore vitality to small businesses. I am pleased to cosponsor this important piece of legislation, and I hope that Congress can expeditiously pass legislation along the lines of what has been suggested by the SEC.

By Mr. GARN:

S. 2519. A bill to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT ADMINISTRATION ACT

Mr. GARN. Mr. President, I rise today for the last time during my Senate career to propose fundamental reform of the process by which the United States controls the export of high technology. The Export Administration Act of 1992 is a major revision of our current export control laws that would centralize management of all U.S. export controls in an Office of Strategic Trade and Technology.

This bill is a substantial redraft of legislation I have proposed in the 97th, 98th, and 101st Congresses but it addresses the same theme I have been pursuing during my 17 years in the Senate. I am firmly convinced that the export control system will never function well as long as it is based on open competition among bureaucracies, each with inherent biases that distort their approach to export controls. Our national security has been poorly served by this focus on agency views and prerogatives. As the export control challenge shifts more and more to proliferation and away from East-West trade, the number of agencies involved and the resulting confusion will only rise.

It is my firm belief that centralizing all export control functions will make the system more efficient, more responsive to U.S. exporters, and better able to meet its primary national security objective. I also believe that this change will limit the constant and often counterproductive appeal to Congress to solve the bureaucratic infighting. For example, I believe that we would simply never find duplicative or overlapping munitions and dual-use controls if one person were in charge of both sets of controls.

We have now seen a succession of EAA reauthorizations in which the Congress has taken on the job of setting licensing thresholds and picking winners and losers in the interagency bidding wars. Congressional micromanagement has become so intense that it has produced a complete impasse with the administration in setting the rules of the system. Congress and the President are battling for control of the system and our failure to reach an accommodation has left the law out of force for 18 months. The best way to end the policy drift is to put the system in good working order, under unified command, and let it function.

The urgency to make sense of the system is underlined by developments in the former Soviet Union and by the growing problem of proliferation of weapons of mass destruction. To deal with the rapidly changing export control situation, we need a firm hand at the tiller. Unfortunately, both the

Commerce and State Departments have come under heavy criticism for allowing sales in the Middle East that, on reflection, should not have gone forward. Defense officials have blown the whistle in a couple of cases but DOD is just as guilty of being asleep at the switch. It is precisely to insulate the technology security process from the pressures of competing agencies and the political fashion of the moment that I am proposing its placement in an independent Office of Strategic Trade and Technology.

While I am placing a brief summary of the highlights of the bill in the RECORD following my statement, I would like to review some of the revisions in this version of the bill. As in past versions, a new office would be created within the Executive Office of the President as the single agency responsible for technology security issues. Its Director would be the President's principal advisor on technology issues and would be solely responsible for routine operations of the U.S. export control system. Broad policy would be set by a Strategic Trade Policy Council, chaired by the Director, with major policy disputes referred to the President.

There would be a single U.S. National Security Export Control Index identifying all goods or technology subject to U.S. controls, including dual-use, munitions, missile, chemical, biological, nuclear, and other foreign policy controlled items. All export control functions and staff at the Commerce, State, and Defense Departments and some authorities of the Energy and Treasury Departments would be transferred to the OSTT.

The growing problem of proliferation of chemical, biological, and nuclear weapons and missle delivery systems would be recognized by placing all of these authorities in the national security section of the act, making them coequal with controls related to strategic weapons. A separate bureau headed by an Associate Director for nonproliferation would be created to provide necessary support for this added workload and provide focus to these efforts.

Internationally, stopping the spread of destabilizing technologies to Third World destinations will require the negotiation of effective control arrangements outside the traditional Cocom framework. A number of multilateral agreements exist but much work is needed to produce uniform controls and agreed approaches to enforcement and to knit them together into an effective nonproliferation framework. The new bill provides for a new export control negotiator, assistance to foreign governments in upgrading export control systems, and encouragement of multilateral sanctions against proliferators.

While I do not underestimate the resistance to or initial cost of creating a single agency, I believe that the efficiency and effectiveness of the system will be enhanced by consolidation of functions in the OSTT. Over time, budget savings should be realized through combination of budget and personnel from the various agencies, even allowing for some backfilling in the policy levels of the agencies. Interagency debate should focus on key policy issues, not on every piece of paper that goes through the export control system. No Cabinet agency will have special consultation rights in the process so we can stop worrying about whether Commerce is putting trade above national security or Defense is closing down foreign markets.

I would be remiss if I did not acknowledge one critical issue that is not addressed by this bill, and on which current law is also completely silent. Silence may be appropriate in this case since the issue is the extent to which export controls should be used to protect U.S. intelligence capabilities. Clearly intelligence gathering is important to our national security but it is not an end in itself absent a significant military threat. In the current export control debate, with the Soviet military threat declining, the ability to gather intelligence is emerging as the major justification for controls in the areas of telecommunications and computer software. If this trend continues over time, industry would face a range of complex export controls with no explicit basis in law. This would not be very workable for the administrators of the export control system or its users.

Needless to say, this is an issue that does not lend itself to public debate. And I do not pretend to have an easy answer as to how appropriately to factor intelligence concerns into the law. However, it is an issue that must be addressed in defining the future of our export control system.

In particular, because of the contentiousness of isues of this kind, I believe creation of an OSTT is the best approach to resolving the problems of our control system. In fact, I believe it is the only hope left short of having Congress destroy the system by trying to fix it. After playing the lone voice crying in the wilderness on this issue for many years, in the last Congress I was joined in this effort by Senator John Heinz. More recently, the House Government Operations Committee proposed a single office and a number of industry spokesmen have begun to recognize the benefits of a single office for export licensing. The Center for Strategic and International Studies has begun to examine seriously the merits of such an approach and the President's Export Council Subcommittee on Export Administration has recommended many of the components of the OSTT bill. It may be an idea whose time is finally coming.

I will not be around to carry forward this fight the next time the EAA comes up for reauthorization and sadly we can no longer rely on the leadership of Senator Heinz on export control issues. Nonetheless, I urge my colleagues to consider this legislation carefully and to adopt the single agency approach in the next Congress.

I ask unanimous consent that a brief summary of the bill and a section-by-section analysis of changes to current law be printed in the RECORD following my remarks.

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

THE EXPORT ADMINISTRATION ACT OF 1992

The Export Administration Act of 1992 represents a substantial revision and restructuring of the current export control statute, the Export Administration Act of 1979. While the bill is not a completely fresh start, it is intended to provide a new framework for control of military and militarily critical technology and for policymaking in the broader area of U.S. technology security during a period of transition in the 1990s. In addition to streamlining export control procedures and substantially revising or eliminating outdated legislative language in current law, it has the following major components.

A new control framework.—The bill creates a single office as sole administrator of the control system and a new Cabinet council for technology security policy. Routine matters such as individual licensing decisions and list review and classifications would be separated from the interagency process of establishing broad policy.

The Office of Strategic Trade and Technology (OSTT) would be created within the Executive Office of the President. It would combine the export and munitions control staff and functions of Commerce, State, Defense and Energy into a single agency responsible for technology security issues and for exclusive management of the export control system. Its Director would be the President's principal advisor on technology issues and issues related to U.S. economic security such as foreign investment.

A Strategic Trade Policy Council (STPC) would establish broad export control and technology security policies. The Council would be chaired by the OSTT Director and would include the Secretaries of Commerce, Defense, State and Treasury, the U.S. Trade Representative, the Director of Central Intelligence and other officials as appropriate. The STPC would have no role in review and clearance of individual export cases.

A strengthened role for industry would be provided through creation of an Office of Industry Advisory Committees. The office would be headed by the Chairman of the President's Export Council Subcommittee on Export Administration who would advise the Director on technology issues and coordinate the activities of the various industry advisory committees.

Enforcement of all export and munitions control laws would be consolidated in the Customs Service, with compliance functions related to licenses, pre-license and post-shipment checks retained in an Office within the OSTT. The OSTT would provide on-line service to assist exporters in complying with the complexities of new non-proliferation regimes.

A comprehensive approach to national security and export controls.—The bill creates

a single source of information on export controls and broadens the national security focus of controls to include the growing problem of proliferation of weapons of mass destruction.

Controls on proliferation of nuclear, chemical and biological weapons and missile systems would be added to the national security section of the law. The growing importance of proliferation would also be recognized in the creation of a separate Bureau headed by an Associate Director for Non-Proliferation. The new Bureau would support the growing proliferation licensing workload and give focus to the difficult challenge of negotiating new proliferation control arrangements outside COCOM.

International cooperation in controlling illegal export would be encouraged through U.S. assistance in upgrading export control systems, procedures for upgrading the export status of controlled and cooperating countries, and encouragement of multilateral sanctions against diverters.

Negotiations to achieve uniform, multilateral controls on all controlled commodities would be pursued by a Chief Negotiator within OSTT, appointed by the President and holding the rank of Ambassador.

The United States Export Control Index would be a single source of information identifying all goods and technology subject to control for any purpose and on any control list. The Militarily Critical Technologies List and munitions list would be incorporated into the comprehensive index.

Economic security issues.—Creation of a new Bureau for Economic Security would recognize the growing importance of a variety of import, export and investment issues that affect U.S. security.

Commerce's economic security responsibilities would be transferred to OSTT including imports threatening U.S. national security under section 232 of the Trade Expansion Act of 1962, short supply controls, antiboycott regulations, and responsibilities under the Defense Production Act.

The Director would assume the leadership of CFIUS, the Committee on Foreign Investment in the United States, now headed by the Treasury Secretary. The responsibilities assumed by OSTT would include monitoring overall foreign direct investment and investment review under the Exon-Florio provisions.

The Director would participate in all policy deliberations related to economic security including the Competitiveness Policy Council and the Trade Policy Committee.

SUMMARY OF CHANGES TO CURRENT LAW

Section 1. Short Title; Table of Contents. Renames the statute and provides a revised table of contents.

2. Section 2. Findings and Policy. Shortens and revises the Findings and Policy section of current law to reflect the increased emphasis on proliferation of weapons of mass destruction.

3. Section 3. Office of Strategic Trade and Technology. Establishes the Office of Strategic Trade and Technology incorporating the export control responsibilities and resources of the Departments of Commerce, State and Defense and a partial transfer of responsibilities from the Department of Energy and the Office of Foreign Assets Control at Treasury.

Makes the Director solely responsible for export licensing and control, eliminating interagency license referrals and overlap of controls among agencies.

Designates the Director as the President's principal adviser on strategic trade and technology policy, chair of the Strategic Trade Policy council and the Committee for Foreign Investments in the United States, and member of other policy councils related to economic security.

Establishes the Strategic Trade Policy Council chaired by the Director and consisting of the Secretaries of Commerce, Defense, Energy, State and Treasury and the Director of Central Intelligence, the National Security Adviser, the United States Trade Representative, the Director of the Arms Control and Disarmament Agency and the Chairman of the Nuclear Regulatory Commission. The STPC would establish overall strategic trade policy and any disputes would be subject to firm deadlines.

Mandates principal officers as follows: a Deputy Director responsible for day-to-day operations; an Associate Director for Export Administration responsible for all licensing; an Associate Director for Non-Proliferation; an Associate Director for Economic Security responsible for foreign investment, the Defense Production Act and other economic security issues; and a Chief Negotiator with the rank of ambassador.

Creates an Office of Industry Advisory Committees to coordinate and upgrade industry input in the control process.

Section 4. General Provisions. Generally clarifies current law and—

Establishes a United States Export Control Index as a single source of information regarding all export licensing requirements under U.S. law.

Clarifies and streamlines the rules for foreign availability determinations under the Act, eliminating confusing rules for West-West decontrol.

Section 5. National Security Controls. While maintaining all current control and licensing authorities, substantially revises the national security authorities under the Act to eliminate the exclusive focus on the Soviet Union and allied countries and to reflect the changing national security threat confronting the United States and the West.

Establishes a dual national security focus on two classes of countries: those that are a strategic military threat and subject to COCOM controls; and those that are of concern regarding proliferation of weapons of mass destruction including chemical, biological and nuclear weapons and missile delivery systems.

Mandates procedures for removing countries that are cooperating with the West from the list of controlled countries and provides assistance to such governments in development of export control systems and defense conversion.

Maintains a separate control policy for the People's Republic of China denying special preferences to China and placing conditions related to end-use and reexport on shipments of items controlled for proliferation purposes.

Mandates negotiations to establish fully multilateral national security controls and a common standard of enforcement among cooperating countries which would then enjoy preferential licensing or license-free trade as in COCOM.

Requires publication of COCOM control lists and agreements affecting those lists.

Section 6. Foreign Policy Controls. Generally clarifies the text of current law, moves all proliferation control authority to section 5, and strengthens the requirement that the President pursue diplomatic alternatives to foreign policy controls.

Section 7. Short Supply Controls. Substantial clean up of current law with expansion of the authority to petition for monitoring or controls to permit petition by any party affected by short supply conditions.

Section 10. Procedures for Processing Export License Applications; Other Enquiries. Cleans up the text of current law and—

Tightens timeframes for review of national discretion and favorable consideration cases in COCOM.

Eliminates special procedures for the Secretary of Defense because all interagency referral of licenses is eliminated under the new Office.

Section 11. Violations. Clarifies and consolidates the various categories of violations under the Act and increases penalties.

Section 11A. Multilateral Export Control Violations. Combines sanctions authority provided for violations of strategic controls as well as nuclear, chemical, biological and missile proliferation into a single sanctions section of the Act.

The separate standards in current law for each sanctionable violation are maintained but common sanctions, time periods, affected parties, exceptions and waivers are provided.

The role of consultation with other governments is strengthened to encourage application of collective sanctions against violators and to permit the President to waive sanctions where a government of jurisdiction is a participant in a multilateral control arrangement and takes effective action to terminate the involvement of the foreign party in illegal transfers.

Section 12. Enforcement. Consolidates authority for enforcement of the Act under the Commissioner of Customs, eliminating the overlap of authority between Commerce and Customs in current law.

Directs the Commissioner to coordinate activities with the OSTT, the FBI, Treasury, and the intelligence agencies and to establish an interagency working group to ensure uniform policies, improved training, and the fullest possible utilization of enforcement authorities under the Act.

Activities reserved for the OSTT include: monitoring compliance with the terms of all licenses; prelicense and postshipment verifications, including overseas; close cooperation with Customs on enforcement; and imposition of civil penalties and administrative sanctions under the Act.

New responsibilities assigned to the OSTT include: assistance to foreign governments, including controlled countries, in improving their export control systems; and providing expanded and timely information to exporters on proscribed parties, unreliable end-users and projects of concern regarding proliferation.

The Commissioner is required to report annually on all enforcement activities under the Act including coordination of activities with other agencies and total resources dedicated to enforcement.

Section 13. Administrative Procedure and Judicial Review. Generally clarifies current law and—

Expands judicial review in areas that do not involve agency discretion such as statutory mandates, prohibitions or deadlines.

Provides a new legal defense for exporters in cases in which noncompliance with contracts to export goods or technology is caused by denial of export licenses.

Section 14. Reports. Streamlines annual reporting requirements under the Act, removing outdated material.

Section 15. Definitions. Greatly expands the definition section of the Act providing a statutory definition for all technical terms used.

Section 16. Effect on Other Acts. Authority of the OSTT over export controls on goods, technology or property pursuant to this Act, the Arms Export Control Act, the Nuclear Non-Proliferation Act of 1978, the International Emergency Economic Powers Act, the Trading with the Enemy Act, and other statutes is detailed. Clear rules are established for the division of responsibility between Export Administration Act of 1992 and the Arms Export Control Act.

Section 17. Authorization of Appropriations. Such sums as may be necessary are authorized to be appropriated.

Sections 18–21. Conforming Amendments. Conforming amendments are made to the Defense Production Act of 1950, the Trade Expansion Act of 1962, the Arms Export Control Act, and the Nuclear Non-Proliferation Act of 1978 specifying the new authority of the OSTT and its Director.

Section 22. Savings Provisions. Provides for continuation of all delegations, rules, regulations, etc. in force on the date of enactment and provides that new requirements in the Act shall not apply to administrative proceedings underway and licenses pending on the date of enactment.

Sections 23–24. Effective Date; Termination Date. The Act is effective upon expiration of the Export Administration Act of 1979 and terminates on September 30, 2000.

By Mr. KENNEDY (for himself, Mr. SIMPSON, Mr. DODD, and Mr. LUGAR):

S. 2520. A bill to support efforts to promote democracy in Haiti; to the Committee on Foreign Relations.

DEMOCRACY IN HAITI ACT

Mr. KENNEDY. Mr. President, I would like to introduce a bill on behalf of myself, Senator SIMPSON, Senator DODD, and Senator LUGAR. This measure supports efforts to return to power the democratically elected government of Haitian President Jean-Bertrand Aristide, and to promote democracy in Haiti.

Six months ago, President Aristide was toppled by a violent military coup. Today, he remains in exile, and the military regime which deposed him continues to repress the Haitian people and intimidate members of the democratically elected Parliament.

International efforts to negotiate President Aristide's return and end this violence, including the February protocol between President Aristide and representatives of the Haitian Parliament, have been undermined by this repressive regime. In a travesty of justice, the Haitian Supreme Court recently found the protocol unconstitutional. With the decision of this puppet court firmly in hand, coup leaders have now threatened to arrest members of the Haitian Parliament if they try to ratify the prodemocracy accord.

This continuing assault on Haiti's democracy is an affront not only to the people of Haiti, but to all friends of freedom around the world. It is more important than ever for the United States to maintain a strong stand with the Haitian people in their struggle for a peaceful, democratic Government.

It is time for the Bush administration and the Organization of American States to strengthen international sanctions against the illegal Haitian regime, expedite the return of President Aristide, and restore democratic Government in Haiti.

More than 1,500 people have died in violence stemming from the coup. The regime has cracked down on all sectors which supported President Aristide, including priests, pastors, human rights organizations, labor unions, and journalists.

Over 16,000 Haitian citizens fled the chaos and brutality in Haiti by taking to the high seas in makeshift rafts and boats in the hope of finding a safe haven in the United States. A third of these individuals were screened for entry into the United States. The rest were forcibly returned by the Bush administration to the violence they had fled.

Thousands of other Haitians are displaced across the country, uncertain of how they will survive, and fearing for their lives at the hands of soldiers and remnants of the outlawed Tons-Tons Macoutes death squads.

The embargo initiated against Haiti last October by the OAS has been weakened substantially by blatant violations, the ill-advised unilateral easing of the United States embargo, lack of participation by many European countries, and frequent trips to the United States by wealthy Haitians who support the military government and use their ability to travel to ease the hardships of the embargo.

If the embargo is to be effective in bringing pressure on the regime to negotiate a satisfactory resolution to the crisis, we must work to convince all of Haiti's trading partners to join in and tighten the embargo. and we must not allow individuals funding the regime access to assets in the United States.

The most appropriate measures for resolving the Haitian crisis have already been defined. On February 23, President Aristide and representatives of the Haitian Parliament signed an accord which contains many of the steps necessary to restore a democratic Government. All parties to this protocol recognized the need for the Haitian Parliament to restore President Aristide to power, install a prime minister of his choice and the Parliament's approval, and proclaim a general amnesty for participants in the coup.

In addition, the OAS has developed a proposal for a civilian mission, called the OAS-DEMOC, to facilitate the reestablishment and strengthening of democratic institutions in Haiti and promote the full force and effect of the Haitian constitution, respect for human rights, and the administration of justice. The protocol endorsed President Aristide's request for the OAS-DEMOC mission in Haiti.

Unfortunately, ratification of the protocol by the Haitian Parliament has been repeatedly postponed as its members have been intimidated and bribed by the regime. Last week, the illegally constituted Supreme Court, under pressure from the military, found the protocol unconstitutional.

This transparent effort by the military regime to prevent the return of Haiti's democratically elected Government cannot be allowed to stand. If the Congress wants to ensure that Haiti's legitimate Government is returned to power, we must make it clear by every means possible that the American people stand with the forces of freedom within Haiti, and that we will not acquiesce in the rule violence and corruption in this hemisphere.

The reestablishment of stability and democracy in Haiti will require assistance from the international community and a sustained international presence in Haiti. In addition, it will require the building and strengthening of democratic institutions, the creation of a functioning judicial system, the creation of a new police force, and respect by those in authority for the human rights of all Haitians. The Haitian Armed Forces must be reformed and restructured under civilian control to remove the military from political activity.

The OAS–DEMOC mission, once put into motion, will provide critical support to these efforts to build a lasting democracy in Haiti and to create a functioning democratic society.

To this effect, we are introducing today a measure designed to promote the return of democracy.

It is my understanding that this legislation is also being introduced in the House by Congressmen RANGEL and TORRICELLI.

To restore the democratically elected Government of Haiti, the measure:

First, urges all governments, including those outside this hemisphere, to abide by the OAS-supported embargo of Haiti, and to consider measures to strengthen international sanctions if significant progress toward the restoration of the democratically elected Government of Haiti is not promptly achieved;

Second, urges all governments participating in the embargo to permit assistance to impoverished areas in Haiti by nongovernmental organizations;

Third, gives its full support to the protocol between President Aristide and the Parliamentary Negotiating Committee regarding a permanent solution to the Haitian crisis;

Fourth, expresses its grave concern over delays in the Haitian Parliament in the ratification of the protocol;

Fifth, calls upon the Haitian Parliament to lend its full support to the agreement and calls on the Haitian Armed Forces and the de facto government to respect the actions of the Parliament;

Sixth, calls upon Haiti's Armed Forces, Parliament, and de facto gov-

ernment to restore individual rights and freedoms within Haiti;

Seventh, calls upon Haiti's Armed Forces to submit to civilian control;

Eighth, calls upon all parties to renounce violence as a means of achieving political goals;

Ninth, lends its full support to the OAS proposal for a civilian OAS-DEMOC mission in Haiti and calls upon the international community to support its continuation for an extended period of time; and

Tenth, calls upon the OAS to consider additional measures if significant progress toward the restoration of the democratically elected government is not promptly achieved.

The measure authorizes the Secretary of State to contribute $22 million on behalf of the United States to the OAS-DEMOC Program in Haiti over a 5-year period. It urges the Secretary to allocate an additional $3 million at once, and to ensure appropriate burden-sharing among OAS member governments in providing resources for OAS-DEMOC.

In addition, the measure makes Haitians who directly assisted the military coup or who participated in terrorist acts against the Haitian people ineligible for admission to the United States until a democratically elected government has been restored in Haiti.

It also authorizes the President to block the assets in the United States of Haitians who were directly involved in the coup.

The United States should lose no time in responding to the crisis in Haiti. If the Haitian people's dream of freedom and democracy is to become a reality, we must act now to restore the rule of law in Haiti. Haiti's military oppressors must learn that naked aggression will not prevail and that a penalty will be paid for attempts to undermine democracy in this hemisphere.

If the Congress wants to build on our long and close relationship with the Haitian people, we must take steps to ensure that we are supporting progress toward a democratic system of government that guarantees fundamental rights of freedom and liberty, that we are not permitting a repressive military regime to destroy a democratic government by our inaction.

I urge my colleagues to join us in supporting this measure on behalf of the Haitian people.

Mr. SIMPSON. Mr. President, I am very pleased to join with my colleague from Massachusetts in introducing this bill which expresses the Congress' interest in building a durable democracy in Haiti.

Since winning of their independence 188 years ago, the Haitian people have never known political stability or economic security. Then the promise of free elections in February of 1990 gave the Haitian people hope that political freedom and economic opportunity would finally come to Haiti.

Unfortunately, while the elections produced a democratically elected president and Parliament, it did not produce a democratic government. The President feuded with the Parliament and the military. The business community, some members of Parliament, and even some in the military, felt threatened by the masses which took to the streets in support of the President. And the masses feared the military. Those institutions so important to a true democracy: A functioning judiciary, a civilian police, and a military under civilian control, simply did not exist.

Without these institutions to support its democratically-elected government, the hope of a democratic Haiti flickered out with the military coup on September 30, 1991.

As a result of the coup, followed by the OAS embargo, many Haitians gave up hope of a better future, and more than 16,000 set sail for Florida. Those with a credible claim to refugee status—over 6,000 to date—have been brought to the United States to pursue that claim. The majority, those who left for economic reasons, have been returned. I fully support the administration's repatriation policy. Our Embassy, as well as independent monitors, have followed up on those who were repatriated, and there is no supportable evidence that the returnees are mistreated.

The embargo, which I do support, has caused the loss of tens of thousands of assembly sector jobs. The market for Haiti's only significant agricultural export, mangoes, has been lost to the embargo. And on top of everything, Haiti is suffering through a 40-year low in rainfall with a corresponding loss of food production which will add to the malnutrition already developing in that country.

My point is, Mr. President, that things are bad and growing worse in Haiti, and we must act swiftly now, together with our neighbors in the hemisphere, if we are to assist this country to get to its feet and stand tall by itself.

This measure expresses our findings that the democratically elected President of Haiti, Jean-Bertrand Aristide, must be returned to office. The international community must lend its strong support to the establishment of economic stability and the securing of democracy in Haiti by building and strengthening democratic institutions in that country. The bill expresses the Congress' strong support for a more effective embargo; for the swift approval of the OAS-sponsored protocol between President Aristide and the Haitian parliamentary Negotiating Committee; and for the sustained support and presence of an international contingent in Haiti until a functioning and secure democracy is achieved.

I urge my colleagues to join us in this strong expression of our support for an economical secure and politically stable Haiti.

By Mr. HEFLIN:

S. 2521. A bill to make technical and procedural amendments pertaining to the U.S. Court of Federal Claims and the judges thereof in order to promote efficiency and fairness, and for other purposes; to the Committee on the Judiciary.

COURT OF FEDERAL CLAIMS TECHNICAL AND PROCEDURAL IMPROVEMENTS ACT

• Mr. HEFLIN. Mr. President, I rise today to introduce legislation to amend title 28 of the United States Code to improve the Federal claims litigation process before the U.S. Claims Court and to assist the court in providing better and more efficient service to its litigants. It will also insure fair treatment for the regular and senior judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

The Claims Court is the Nation's primary forum for monetary claims against the Federal Government. The court has jurisdiction to entertain suits for money against the United States that are founded upon the Constitution, as act of Congress, and Executive order, a regulation of an executive department, or contact with the United States and that do not sound in tort. The court hears major patent cases, Government contract suits, tax refund suits, fifth amendment takings cases and Indian claims, among many other type of law suits. The court has national jurisdiction, and the judges hear cases around the country at locations that are most convenient to the litigants and the witnesses.

The legislation that I am introducing today extends several existing provisions of title 28 to apply to the Claims Court and clarifies other provisions. The amendments will improve the procedures for judicial continuity and recall. The amendments will also make applicable to Claims Court judges provisions that now apply to federal judges in general. The amendments will improve the service that the court can provide to litigants by clarifying issues over court jurisdiction and appropriate sites for holding trials. In addition, the amendments will provide resources needed to improve the court's already impressive performance in difficult, complex cases. Finally, the bill will also reduce confusion over the name of the court. Let me provide a brief summary of my bill:

Section 2 will change the name of the Court from U.S. Claims Court to "U.S. Court of Federal Claims." This properly reflects the actual Federal jurisdiction of the Claims Court, is faithful to the historic name of the court and will also reduce confusion between this court and small claims courts in various jurisdictions.

Section 3 provides that in the event a judge is not reappointed, the judge will

nonetheless remain in regular active status until his successor is appointed and takes office, thus insuring that the court will always have a full compliment of regular active judges.

Section 4 will insure that Claims Court judges over age 65 who are on senior status will receive the same treatment as other Federal trial judges on senior status insofar as Social Security taxes and payments are concerned.

Section 5 amends title 28 to clarify that the judges of the U.S. Claims Court are judicial officers eligible for coverage under annuity, insurance and other programs available under title 5 of the United States Code.

Section 6 provides that judges of the Claims Court are covered by section 371(e) of title 28 and are to receive any military retirement pay to which they are otherwise entitled. This will extend to Claims Court judges the same treatment now provided for other Federal trail judges insofar as earned military retirement pay is concerned.

Section 7 eliminates superseded and duplicated provisions pertaining to the recall of a senior judge of the Claims Court.

Section 8 will insure that Claims Court judges have the authority to hire the same number of law clerks as U.S. District Court judges. This will insure that the Claims Court judges have sufficient legal resources to discharge their unique and heavy judicial responsibilities.

Section 9 clarifies the authority of the court to hold proceedings where convenient to the litigants and witnesses. The amendment will restore the authority of the court to preside in hearings overseas, particularly in Government contract disputes, when the circumstances of the case make that the most appropriatelocation for the parties and witnesses.

Section 10 amends the court's jurisdiction in four ways to reduce recurring, wasteful litigation over jurisdictional issues. The first change provides the claims court with declaratory judgment jurisdiction in contract cases, which will allow the court to address default termination claims unaccompanied by a claim for money damages. The second change will extend ancillary jurisdiction to a tort claim under the Federal Tort Claims Act when that claim is related to an action otherwise plainly within the court's subject matter jurisdiction. The third change will repeal section 1500 of title 28, eliminating much wasteful litigation over non merits issues. Finally, the fourth change will make certification of claims under the Contract Disputes Act non jurisdictional. Wasteful and esoteric litigation over this issue has produced several hundred written conflicting opinions from various courts and agency appeals boards. The treatment of this topic parallels a 1983 recommendation of the Administrative Conference of the United States.

Sections 11 and 12 will promote uniformity among the courts by making applicable to the Claims Court various provisions of title 28 pertaining to costs, witness fees, forma pauperis proceedings and payment of judgments now applicable to other Federal trial courts.

Section 13 will amend 28 U.S.C. section 2521 to provide for the Claims Court the same authority to enforce its orders and processes as is presently provided for the U.S. Tax Court.

I urge my colleagues to support this legislation, which I believe will promote efficiency and fairness. The U.S. Claims Court is an important part of the Federal court system. The creation of this court by the Congress to do justice responded to a very basic democratic imperative: Fair dealing by the Government in disputes between the Government and the private citizen. As Abraham Lincoln noted: "It is as much the duty of the Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals." These amendments will allow it to better comply with its mandate and assist it in providing improved service to litigants and to the entire country.

Mr. President, I request unanimous consent that the text of the bill be included in the RECORD.

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

S. 2521

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 "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

SEC. 2. COURT DESIGNATION.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, in amended by—

(1) striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document of or relating to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and.

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

SEC. 3. HOLDOVER TENURE.

Section 172(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a judge is not reappointed, such judge may continue in office until a successor is appointed and takes office.".

SEC. 4. SOCIAL SECURITY AMENDMENTS.

Section 178 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) For the purpose of construing section 3121(i)(5) of the Internal Revenue Code of 1986 and section 209(h) of the Social Security Act (42 U.S.C. 409(h)), the annuity of a Court of Federal Claims judge on senior status after age 65 shall be deemed to be an amount paid under section 371(b) of this title for performing services under the provisions of section 294 of this title.".

SEC. 5. ELIGIBILITY FOR INSURANCE AND ANNUITIES PROGRAMS.

Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 179. Insurance and annuities programs

"For the purpose of construing title 5, a judge of the United States Court of Federal Claims shall be deemed to be a 'judge of the United States' as designated in section 2104(a) of title 5.".

SEC. 6. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 180. Military retirement pay for retired judges

"Section 371(e) of this title shall be applicable to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined by section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following:

"179. Insurance and annuities programs.".
"180. Military retirement pay for retired judges.".

SEC. 7. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984."; and

(4) in subsection (f) by—

(A) striking ", a judge of the Claims Court,"; and

(B) striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "section 178 of this title or under" after "under"; and

(2) in the second sentence of subsection (d) by striking "civil service".

SEC. 8. LAW CLERKS AND SECRETARIES.

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

SEC. 9. SITES FOR HOLDING COURT.

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to utilize facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) FOREIGN COUNTRY.—

(1) REDESIGNATION.—Subsection (b) of section 798 of title 28, United States Code, is redesignated as subsection (c).

(2) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency and justice will be served, the chief judge may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings.".

SEC. 10. JURISDICTION.

(a) REMEDIES.—The last sentence of section 1491(a)(2) of title 28, United States Code, is amended by inserting after "judgment" the following: ", including declaratory judgment,".

(b) ANCILLARY JURISDICTION.—Section 1491(a) of title 28, United States Code, is amended by adding at the end thereof the following:

"(4) To afford complete relief on any claim within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction to render judgment upon any related claim authorized by sections 1346 (b) and (c) and 2674 of this title, provided that there has been compliance with section 2675 of this title.".

(c) REPEAL.—Section 1500 of title 28, United States Code, is repealed.

(d) PUBLIC CONTRACTS.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended by adding at the end thereof a new subsection as follows:

"(f) Notwithstanding any other provisions of law or judicial doctrine, the claim certification requirements of this section shall not be deemed jurisdictional in any court or agency board proceeding pursuant to sections 607, 608 or 609 of this title.".

SEC. 11. AWARDABLE COSTS.

Section 1919 of title 28, United States Code, is amended by—

(1) striking "or" and inserting a comma; and

(2) inserting after "Trade" the following: ", or the Court of Federal Claims".

SEC. 12. PROCEEDINGS GENERALLY.

Section 2503 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d) For the purpose of construing sections 1821, 1915, 1920 and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

SEC. 13. SUBPOENAS AND INCIDENTAL POWERS.

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended by—

(1) amending the section heading to read as follows:

"§ 2521. Subpoenas and incidental powers";

(2) inserting "(a)" before "Subpoenas requiring"; and

(3) adding at the end thereof the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) SECTION HEADING.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

"2521. Subpoenas and incidental powers.".

SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.•

By Mr. SIMON:

S. 2522. A bill to direct the U.S. Sentencing Commission to make sentencing guidelines for Federal criminal cases that provide sentencing enhancements for hate crimes; to the Committee on the Judiciary.

HATE CRIMES SENTENCING ENHANCEMENT ACT

• Mr. SIMON. Mr. President, I rise today to introduce the Hate Crime Sentencing Enhancement Act of 1992, which enhances the penalty for committing a crime in which bias is the motivating factor. As many of my colleagues may recall, in 1990, I sponsored the Hate Crimes Statistics Act, which requires the Attorney General to collect information on hate crimes. By doing so, we can study trends and try to predict and prevent such unthinkable acts.

While I am pleased that the FBI has worked hard on implementation of the Hate Crimes Statistics Act, and data should be available this summer, recent newspaper reports lead me to conclude that we are seeing a rise in these incidents. In the past month alone, I have made several statements in the CONGRESSIONAL RECORD about recent hateful acts.

Today, I rise to take the next logical step in addressing this problem, which does not appear to be subsiding. As our Nation grapples with a weak economy and worrisome cries of some politicians who want to recede into isolationism, too many of our citizens react with hate toward others. Mr. President, our country cannot tolerate crimes that victimize innocent people who are members of a majority.

As the leaders of our Nation, we must serve as role models in this fight to provide security to all of our citizens, whether they find themselves in a minority or in a majority. If we do nothing as the elected representatives of our country, who are looked to for guidance, we cannot condemn others for inaction. It is time that we get up and act.

For these reasons, I am proud to introduce the Hate Crimes Sentencing Enhancement Act of 1992. This bill directs the U.S. Sentencing Commission to provide sentencing enhancements of not less then three offense levels for offenses that are hate crimes. The enhancement will increase penalties for crimes, when motivated by hate, by an average of one-third. The act directs the Sentencing Commission to promulgate guidelines that will accomplish this penalty enhancement in such a way as to avoid problems of duplicitious punishment and to assure reasonable consistency with other guidelines.

Hate crimes are defined in the bill as being those criminal acts that were motivated by hatred, bias, or prejudice based on the victim's actual or perceived race, color, religion, national origin, ethnicity, gender, or sexual orientation. This bill will send a warning to those who might be tempted to submit to their illogical hate and bias and commit crimes against others, that if they do such misconduct, they will be accordingly punished.

Any crime against people is cause for serious concern, but crimes that evolve from hate are the most foreboding. Hate crimes, such as the several cross burnings that have recently occurred in nearby Maryland, often are viewed not only as acts of the criminals, but symptoms of a deeper societal illness. We have the ability to try to eradicate this illness from our Nation. We can warn would-be criminals who seethe with hate that their misconduct is not acceptable and will be met with an increased punishment. We must combat these unconscionable acts if we seek to be recognized as the leaders of our great Nation, whose strength still rests on the amalgam of our individual citizens' differences.

Mr. President, the people of our country and I look forward to the speedy enactment of this bill so that we can take one more small step to cure this ill.•

By Mr. MOYNIHAN (for himself, Mr. JOHNSTON, Mr. MITCHELL, Mr. LAUTENBERG, Mr. BREAUX, and Mr. D'AMATO):

S. 2523. A bill to authorize the Secretary of the Army to develop an engineering strategy to minimize adverse environmental impacts of overflows and discharges from combined stormwater and sanitary sewer systems, and for other purposes; to the Committee on Environment and Public Works.

COMBINED STORMWATER AND SEWER OVERFLOW MANAGEMENT STRATEGY ACT OF 1992

• Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation that will help form a strategy for eliminating one of the most serious threats remaining to our Nation's waters. I am most pleased that Senators JOHNSTON, MITCHELL, LAUTENBERG, BREAUX, and D'AMATO have joined me as original cosponsors.

Mr. President, this is not a difficult issue to understand. A nation concerned with the quality and integrity of its water resources cannot fail to address the matter of combined sewer overflows. It is an ugly name for an ugly problem. A combined sewer overflow, or CSO, as they are commonly called, is a sewer system that uses the same pipes to carry both household sewage and rainwater. Unfortunately, wastewater collection systems and treatment facilities in many older cities were not designed to handle the volume of water that results from heavy storms.

The result is a mixture of rainwater and sewage that bypasses the sewage treatment facility and is pumped directly into the nearest river, lake, or harbor. Oftentimes the result is the closure of nearby beaches and waterways for health reasons. Not a very efficient way of handling human waste. Indeed, this is a problem common to Third World nations.

CSO systems currently serve about 1,100 communities nationwide. During rainstorms these areas violate the health based standards of the Clean Water Act. For instance, in my own State there is a lake in upstate New York which has the unfortunate distinction of being known as the dirtiest lake in the Nation. Those who have heard me before on this subject know that I speak of Onondaga Lake in Syracuse, NY. I will spare my colleagues most of the story; the lake's problems are too numerous to discuss in great detail.

I can, however, state that years of neglect and abuse have tuned a once pristine water into a very unattractive and, for the most part, an unusable body of water. During the course of an average year, Onondaga Lake receives 1.8 billion gallons of mixed raw sewage and untreated stormwater from its CSO system.

In 1990, this body enacted the Onondaga Lake Management Act, which I sponsored. The Environmental Protection Agency, U.S. Army Corps of Engineers, New York State Department of Environmental Conservation, New York State Attorney General, Mayor of Syracuse, Onondaga County Executive, and other community leaders are now engaged in a monumental effort to regain this lost resource. Rarely in an area as politically diverse as this one is a consensus for action achievable. But a consensus is developing. The people of Onondaga County want their lake back and I have promised my support.

Mr. President, the Environmental Protection Agency estimates that the cost of needed investments in sewage treatment nationwide is $110 billion. These costs to communities are likely to increase as programs to control stormwater discharges and overflows of raw sewage are implemented.

The bill I will introduce today will start the process of developing a coherent national strategy for CSO's. Specifically, I will authorize the U.S. Army Corps of Engineers to spend $250 million to design and construct CSO prevention systems in Boston, New Orleans, Portland, and Bangor, ME, Onondaga Lake, Newark Bay, and Long Island Sound.

These areas represent a cross section of CSO problems. The Corps of Engineers will also conduct a national study of this problem from an engineering standpoint and make recommendations within existing regulations established by the Clean Water Act and adjust for any changes to the act.

Mr. President, this is not a way for communities to escape their obligations to adhere to the Clean Water Act. This is rather, a supplemental program which will engage the country's most preeminent engineering corps, in solving what is, in essence, an engineering problem.

The Army Corps of Engineers is charged with managing the Nation's water resources. It has had a historic involvement with waste water management. In the late 1970's and early 1980's the Nation was beginning to come to grips with waste water management problems. During that period the corps responded with an urban studies program. This program was developed to assist communities with assessing waste water problems to help them in finding solutions.

Following Clean Water Act Amendments in 1977, the corps' efforts evolved into the EPA Construction Grants Program. It was designed to help communities improve their infrastructure for water management. Now, we must again call on the corps to help solve a perplexing national problem.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point and that it be appropriately referred.

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

S. 2523

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 "Combined Stormwater and Sewer Overflow Management Strategy Act of 1992".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Pollutants discharged into the waters of the United States by overflow from combined stormwater and sanitary sewer systems are one of the major sources of degradation of the estuaries, estuarine zones, coastal waters, lakes, and rivers of this Nation.

(2) The infrastructure of this Nation is insufficient to meet the requirements for water quality under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(3) The Federal Government must take an active role in providing such technical and financial assistance to State and local governments as is necessary to correct overflows from combined stormwater and sanitary sewer systems into the waters of the United States.

(4) The Federal Government lacks an engineering and technology-based management strategy to optimize Federal investment in combined stormwater and sanitary system improvements to protect the waters of the United States, aquatic ecosystems, and public health.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "CSO" means the overflow or effluent, or point of discharge thereof, from a combined stormwater and sewer system or stormwater drainage canals;

(2) the term "Secretary" means the Secretary of the Army;

(3) the term "Administrator" means the Administrator of the Environmental Protection Agency; and

(4) the term "assessment" means a comprehensive management plan that identifies and quantifies the infiltration of storm sewers by municipal sewage systems and other point source discharges, and selects, applies, and evaluates abatement technologies.

SEC. 4. COMBINED SEWER OVERFLOW PREVENTION PROGRAM.

(a) IN GENERAL.—

(1) COMBINED SEWER OVERFLOW PREVENTION PROGRAM.—The Secretary, in cooperation with the Administrator, and in consultation with local organizations, is authorized to conduct a program to assess, through scientific, management, and economic engineering analyses, the technologies and methodologies that are available to—

(A) address the adverse impacts of receiving waters or discharges from combined stormwater and sanitary systems; and

(B) ensure compliance with the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(2) CONSULTATION WITH LOCAL ORGANIZATIONS.—In consulting with local organizations pursuant to paragraph (1), the Secretary shall, with respect to the program area described in subsection (b)(2), consult with the Lake Pontchartrain Basin Foundation.

(b) PROGRAM AREAS.—For the purposes of carrying out subsection (a) of this section, the Secretary shall conduct a study of conditions and problems associated with CSOs, and appropriate management and engineering strategies to remedy such problems and complete an assessment for each of the following areas and associated waters:

(1) The watershed areas of the Boston, Massachusetts metropolitan area, from which waters discharge into the Charles River and Boston Harbor.

(2) The New Orleans metropolitan area within the Jefferson and Orleans parishes, Louisiana, from which waters discharge into Lake Pontchartrain and the Mississippi River.

(3) The watershed areas of the Penobscot River in the vicinity of Bangor, Maine, and

the Casco Bay in the vicinity of Portland, Maine.

(4) The watershed area of the New Jersey side of the Hudson River and Newark Bay and the watershed area of Long Island Sound.

(5) The watershed area of Onondaga County and Syracuse, New York, from which waters discharge into Onondaga Lake.

(c) ASSESSMENT REQUIREMENTS.—

(1) ASSESSMENT CONTENTS.—The engineering-based assessment for each area described in subsection (b) shall include—

(A) an inventory and analysis of all CSO discharges and the impacts of such discharges on receiving water bodies;

(B) the environmental and public health impacts of loading of CSO pollutants into receiving waters and associated ecosystems;

(C) available technologies and methodologies, and other innovative management and planning techniques that may be applied to address water quality problems associated with CSOs;

(D) a management strategy for each area that makes recommendations concerning the least costly Federal and non-Federal actions based on the best available control technology that will result in compliance with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(E) for each management strategy described in subparagraph (D), an evaluation of regional growth and other community impacts attributable to the management strategy.

(2) USE OF AVAILABLE INFORMATION.—In carrying out the study under paragraph (1), the Secretary shall, to the extent practicable, make use of available information from the Administrator and from the head of any State or local department or agency that the Secretary determines to be appropriate.

(d) REPORTS.—Within 4 years after the date of the enactment of this Act, the Secretary shall submit a written report to the Congress that includes—

(1) for each area described in subsection (b), a description of the assessment conducted under subsection (c) for such area, and recommendations concerning such assessment; and

(2) any additional recommendations or observations that the Secretary determines to be appropriate.

(e) CSO PREVENTION PROJECTS.—

(1) IN GENERAL.—(A) As part of the assessment under subsection (c)(1) for each program area described in paragraphs (1) through (5) of subsection (b), the Secretary is authorized to enter into an agreement with the appropriate official of a State or local government in the program area (that submits an approved application to the Secretary) to construct and monitor a CSO prevention project that uses the best available control technology (with respect to CSOs) that are most appropriate for the program area.

(B) As a condition of the agreement, the appropriate official of the State or local government shall provide assurances that the State or local government shall maintain and operate the CSO prevention project. The non-Federal share of the cost of operation, maintenance, and monitoring of the CSO prevention project shall be 100 percent.

(C) The Federal share of the cost of the construction of a CSO prevention project under this paragraph shall be 100 percent.

(2) USE OF INFORMATION FROM PROJECT.—The Secretary shall evaluate the treatment capabilities and performance of each project under this subsection for use in the development of the Federal strategy for combined stormwater and sanitary sewer system infrastructure under section 5 of this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—To carry out the program under this section, except for the CSO prevention projects under subsection (e) of this section, there are authorized to be appropriated to the Department of the Army, $4,000,000 for each of the fiscal years 1993 through 1996.

(2) CSO PREVENTION PROJECTS.—There are authorized to be appropriated to the Department of the Army, for the period beginning with fiscal year 1993 and ending with fiscal year 1996, $250,000,000 to carry out the CSO prevention projects under subsection (e).

SEC. 5. FEDERAL STRATEGY FOR CSO INFRASTRUCTURE.

(a) IN GENERAL.—The Secretary is authorized to develop a Federal strategy for the optimal expenditure of Federal funds for the purposes of—

(1) minimizing the adverse effects of CSOs on the waters and aquatic ecosystems of this Nation; and

(2) assuring compliance with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(b) STRATEGY CONTENTS.—The strategy described in subsection (a) shall include—

(1) using currently available data, an inventory of the combined stormwater and sanitary sewer systems of this Nation, with special emphasis on regional, historical, and demographic similarities and differences in infrastructure for such systems;

(2) an analysis of the relationship between hydrologic and hydraulic variables on pollutant loadings and discharges, including geographic and seasonal factors; and

(3) using the information developed under section 4 of this Act, and currently available scientific and economic data, a model to optimize Federal investment in combined stormwater and sanitary sewer system infrastructure.

(c) REPORT.—Within 5 years after the date of the enactment of this Act, the Secretary shall submit to the Congress a written report that contains the strategy required to be developed under this subsection.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Department of the Army, $1,000,000 for each of fiscal years 1993 through 1997, to carry out this section.

SEC. 6. COORDINATION.

To ensure that the combined sewer overflow program under section 4 and the activities associated with the development of a Federal strategy for combined stormwater and sanitary sewer system infrastructure under section 5 are designed and carried out in such manner as to ensure useful results for making decisions relating to the regulation of combined stormwater and sanitary sewer systems and other related decision-making, the Secretary shall consult with the Administrator, the Administrator of the National Atmospheric and Oceanic Administration of the Department of Commerce, and other appropriate Federal and non-Federal entities.●

Mr. JOHNSTON. Mr. President, today I rise to cosponsor the Combined Stormwater and Sewer Overflow Management Strategy Act of 1992. This legislation provides for comprehensive management of stormwater runoff, a problem perplexing our Nation's urban areas. One of the Nation's most difficult stormwater pollution problems is located in the State of Louisiana. Therefore it is with my particular interest that this legislation targets one of Louisiana's premier environmental treasures: Lake Pontchartrain.

Lake Pontchartrain and its adjacent lakes form one of the largest estuaries in the United States. In my generation, thousands can recall a time when the lake offered the residents of New Orleans and surrounding communities with an unparalled urban lake experience. For the forties through the early sixties, Lake Pontchartrain was a place to enjoy the fruits of freshwater seafood, the thrills of a lakeside resort, and the benefits of swimming and other nautical activities. Commercial fishermen, seafood dealers and restaurateurs prospered from the lakes bounty of shell and fin fish.

However, the lake now suffers from prolonged neglect and the problems associated with its proximity to a large metropolitan area. The transformation of the surrounding communities of the lake from small waterside villages to growing metropolitan suburbs outpaced the ability of the sewage treatment infrastructure to properly dispose of its municipal runoff. Parish governments in the Lake Pontchartrain basin simply lack the resources to meet these pollution challenges and comply with Federal water quality standards.

The result has been tragic. In the past three decades Lake Pontchartrain's water quality has declined to the point where water born recreation has been posted by local health officials as hazardous to human health. Last summer the Tangipahoa, a picturesque river long used for canoeing, tubing and swimming which flows into Lake Pontchartrain was declared a public health threat by State officials, canceling activities of local Girl Scouts and other recreational users.

In the last several years, community leaders in the State organized a foundation to stimulate community awareness and to promote restoration activities for the lake. This legislation recognizes the importance of this foundation by giving it a formal consultive role in the comprehensive management process. In this way, the legislation to the community effort to reclaim a vital environmental and economic resource.

The Lake Pontchartrain restoration effort poses unique environmental challenges which are truly national in importance. The majority of land surrounding Lake Pontchartrain is below sea level, making any secondary treatment of municipal runoff a difficult prospect. Drainage canals which lead from municipal areas into the lake simply do not have the capacity to store stormwater runoff for treatment purposes before the water drains into the lake. Therefore, innovative filtration techniques, such as the construction of manmade wetlands, in some cases is the only means to provide ade-

quate secondary treatment of this point-source runoff.

In order to address the problems associated with municipal point-source runoff into Lake Pontchartrain, this legislation authorizes Federal funds to control point-source pollution in the Lake Pontchartrain basin. It is fair to say that without these funds, State and local government will fall far short of the amount required to fund this enormous undertaking and come into compliance with Federal water quality standards.

Mr. President, this legislation is an enormous undertaking of great national and regional significance. It is estimated that restoration of Lake Pontchartrain will directly produce at least 1,000 jobs locally and will have economic benefits of at least $750 million. Under this criteria, the restoration project which we propose today more than pays for itself in ancillary economic, as well as social benefits.

It is my hope that this effort will help allow the citizens of the Lake Pontchartrain basin to reclaim the lake and to restore Lake Pontchartrain to its former glory as one of this Nation's top urban lakes.

The program authorized by our bill will allow us to reclaim this irreplaceable natural resource, before it is too late, to see that it is maintained responsibly as a habitat for plant and wildlife and as an asset for public benefit and enjoyment, and to assure that it is preserved for future generations.

• Mr. LAUTENBERG. Mr. President, I rise to join Senator MOYNIHAN in introducing the Combined Stormwater and Sewer Overflow Management Strategy Act of 1992. This bill addresses the problems caused by one of the largest remaining sources of water pollution in coastal waters, combined sewer overflows or CSO's.

CSO's occur where domestic sanitary sewage, industrial wastes, and stormwater runoff are collected and treated together. Under normal flows, sewage treatment plants treat this wastewater. When it rains, however, the sewage system can overflow and discharge raw sewage, garbage, runoff, and toxic chemicals, by-passing existing treatment systems and entering our waterways.

Approximately 40 million people live in cities with combined sewer overflows [CSO's]. Over half of these CSO's are located in marine and estuarine areas. In 1989, 250,000 acres of shellfish waters were affected by these raw sewage flows in the northeastern United States. Local communities lose billions of dollars every year because of marine and Great Lake beach closures due at least in part to CSO's.

CSO's result in high bacteria levels, oxygen depletion of waterways, discharges of toxic organic compounds and heavy metals, the smothering of sensitive fish and wildlife breeding grounds with sediment and the discharge which floats in our waters and washes up on our Nation's beaches.

The costs of controlling CSO's are potentially very high. So we must encourage the development and use of cost effective technologies. The bill Senator MOYNIHAN and I are introducing will ensure that this will happen.

The bill does this by requiring the Crops of Engineers to engage in a CSO technology study for five areas with CSO's including northern New Jersey. This study will inventory CSO's discharges and their impacts, and determine available technologies and methodologies available to solve the problems associated with CSO's. It will develop a management strategy for each area that will make recommendations concerning the least costly Federal and non-Federal actions that will result in compliance with the Federal Water Pollution Control Act. And it will determine the costs and benefits associated with implementation of the recommended strategy.

Once the problems and solutions are understood, the bill provides for a series of pilot programs to implement some of the recommendations in each study area. The information generated from these pilot studies will be used to develop a Federal strategy for CSO infrastructure development. By developing strategies for the study areas and testing these strategies, this bill ensures that the Federal strategy developed will be the best technically and economic available.

This bill makes an important step in addressing the CSO problem. I commend Senator MOYNIHAN who is committed to protecting our environment. And I urge my colleagues to support this bill.•

• Mr. BREAUX. Mr. President, I rise today to cosponsor legislation which addresses a very distressing environmental problem: The discharge of untreated stormwater and sanitary sewage pollution into our Nation's estuaries, estuarine zones, coastal waters, lakes, and rivers.

The Combined Stormwater and Sewer Overflow Management Act of 1992 provides for comprehensive management of stormwater runoff. Many urban areas around the country are having great difficulty in addressing stormwater pollution problems because existing infrastructure and technology are insufficient. One of the most difficult examples of this problem is located in my home State of Louisiana. The water quality of Lake Pontchartrain, once treasured by residents of southeast Louisiana for both its economic and recreational resources, has degraded significantly because of pervasive stormwater and sanitary sewage pollution. This legislation targets Lake Pontchartrain in addition to four other areas around the country currently grappling with this problem.

Lake Pontchartrain and its adjacent Lakes form one of the largest estuaries in the United States. Nearly 1½ million people live in the 14 parishes of the Lake Pontchartrain basin, one-third of the entire population of Louisiana. Historically, Lake Pontchartrain's shores and waters offered year-round opportunities for fishing, swimming, boating, crabbing and family picnics, complementing an array of seafood dealers and small restaurants supplied by the lake.

In the past several decades, however, Lake Pontchartrain's water quality has declined at a rapid pace. Untreated toxics such as fecal coliform bacteria, metals, organics, and suspended solids have been discharged from the pumping stations in Orleans and Jefferson Parishes directly into Lake Pontchartrain. Dissolved oxygen levels in the lake have also been linked to stormwater pollution. As a result, dead zones have appeared, indigenous shellfish and fisheries have diminished, swimming has been posted, beaches have been closed, and its substantial commercial and recreational values have been largely written off.

Two years ago, the Lake Pontchartrain Causeway Commission asked a team of scientists, economists, planners, attorneys and local government representatives to study the lake and develop a plan to restore it. One of the key recommendations of that study was the creation of a foundation whose primary mission would be to stimulate community awareness and to promote restoration activities for the Lake. This legislation recognizes the importance of this foundation by giving it a formal consultative role in the comprehensive management process. In this way, the legislation responds to the community effort to reclaim a vital environmental and economic resource.

The problems of restoring Lake Pontchartrain are unique for a number of reasons. First, the New Orleans metropolitan area, which includes Orleans and Jefferson Parishes, gets more stormwater than any other metropolitan area in the country: Six feet of rain a year. Because the area is below sea level, a system of drainage canals collect the rainfall and discharge it to the lake.

Since rain events occur frequently in the area, the rainwater must be pumped out of the canals as quickly as possible in order to prepare for future rainfall. As a result, these drainage canals simply do not have the capacity to store stormwater runoff for secondary treatment purposes before the water drains into the lake.

Second, because the New Orleans metropolitan area has a tendency to subside, a resulting breakage in pipelines that take the area's sewage to the Mississippi River allows sewage to make its way through the stormwater drains to the lake.

This legislation addresses the problems associated with stormwater and sewerage discharges into Lake Pontchartrain as well as several other areas around the country. It authorizes Federal funds for the Secretary of the Army to study and develop an engineering strategy to minimize the adverse environmental impacts of overflows and discharges from stormwater and sanitary sewer systems. Once the studies are completed, the information obtained from these studies will be used by the Secretary to construct and monitor stormwater and sewer prevention projects that use the best available control technology most appropriate for the program area. Finally, the Secretary is directed to use the information obtained from each project for use in the development of a Federal strategy for minimizing the adverse effects of stormwater and sanitary sewer systems on all the waters of the Nation.

Mr. President, this legislation undoubtedly is important for restoring the environmental, recreational, and economic benefits of Lake Pontchartrain. I would also like to stress, however, that the benefits of this legislation extends to all the other communities around the country which do not have the funds or the technology to tackle stormwater and sanitary sewage pollution problems. This bill will help bring the country one step closer to realizing the objectives outlined by the framers of the Federal Water Pollution Control Act of 1972: To restore and maintain the chemical, physical, and biological integrity of the Nation's waters. I ask my colleagues to join me in this effort.●

By Mr. NUNN (for himself and Mr. WARNER):

S. 2524. A bill to provide for the temporary continuation of the current Deputy National Security Advisor in a flag officer grade in the Navy; to the Committee on Armed Services.

TRANSITION GRADE FOR THE DEPUTY NATIONAL SECURITY ADVISOR

Mr. NUNN. Mr. President, today I am introducing a bill with Senator WARNER to provide a transition grade for the Deputy National Security Advisor. Under current law, an officer who has been appointed to three or four star grade for service in a position of importance and responsibility continues to hold that grade after termination of his assignment to the qualifying position for a period of 90 days, while awaiting retirement. This transition period has been provided in recognition of the substantial administrative requirements involved in processing an individual from active duty military to civilian status. It also provides a period of time for the individual to sort out his personal affairs for this change in status.

The present Deputy National Security Advisor reported to that position slightly more than 24 hours after the termination of his prior assignment. The circumstances that precluded a delay in reporting to that new position have also posed obstacles to the administrative requirements for transition to civilian status.

This bill will merely extend the transition period in this case from 90 to 180 days before this officer retires from active military service. I want to emphasize, however, that I continue to believe that it is inappropriate for an officer on extended active duty to fill the position of National Security Advisor or Deputy National Security Advisor. I believe that a short extension in the statutory transition period prior to retirement is in order in this case.

Mr. President, I urge prompt consideration and passage of this bill, and 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. 2524

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRADE OF THE CURRENT DEPUTY NATIONAL SECURITY ADVISOR WHILE PENDING RETIREMENT IN THE NAVY.

Notwithstanding the period of limitation contained in section 601(b)(4) of title 10, United States Code, the person who began service in the position of Deputy Assistant to the President and Deputy for National Security Affairs on December 5, 1991, shall continue to hold the grade of admiral while awaiting retirement in the Navy, except that such person may not continue to hold that grade under the authority of this section after the earlier of —

(1) the date on which he terminates service in that position; or

(2) June 4, 1992.

SEC. 2 EFFECTIVE DATE.

This Act shall take effect as of December 5, 1991.

By Mr. NUNN (for himself and Mr. WARNER):

S. 2525. A bill to amend title 10, United States Code, to make the Vice Chairman a member of the Joint Chiefs of Staff, to provide joint duty credit for certain service; to the Committee on Armed Services.

MAKING THE VICE CHAIRMAN A MEMBER OF THE JOINT CHIEFS OF STAFF

Mr. NUNN. Mr. President, today I am introducing with Senator WARNER legislation to make the Vice Chairman a full member of the Joint Chiefs of Staff. This legislation was included in last year's defense authorization measure that passed the Senate but was not included in the conference report. This action would change the statutory provisions concerning the Vice Chairman, as established in the Goldwater-Nichols Department of Defense Reorganization Act of 1986. That act established the position of the Vice Chairman of the Joint Chiefs of Staff; provided that the Vice Chairman outranks all other members of the Armed Forces except the Chairman; provided for the Vice Chairman to participate in all meetings of the Joint Chiefs; and made the Vice Chairman the acting Chairman of the Joint Chiefs of Staff in the event of the absence or disability of the Chairman. The legislation did not, however, provide for the Vice Chairman to be a member of the Joint Chiefs of Staff.

Designation of the Vice Chairman as a full member of the Joint Chiefs of Staff is appropriate in view of the important responsibilities that the Vice Chairman performs. He is the Chairman of the Joint Requirements Oversight Council, represents the Chairman and the other members of the Joint Chiefs on the National Security Council Deputies Committee, and during time of crisis, like Operations Desert Shield and Desert Storm, he handles those issues not directly relating to the crisis but still requiring the attention of the Chairman. Additionally, this legislation, which has the full support of General Powell and the other members of the Joint Chiefs, would enrich the advice that is available to the Secretary of Defense, the National Security Council, and the President.

The legislation would also provide authority to grant credit for having completed a tour of duty in a joint duty assignment in the case of an officer who performed duty in the Persian Gulf combat zone. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 has as one of its primary purposes the improvement of joint officer management polices to help ensure that future combat operations would be planned and conducted through the efficient integration of land, sea, and air forces. The Congress in 1986 concluded that greater exposure of officers to joint matters through joint duty assignment would encourage the joint perspective necessary to achieve that combat integration goal. Operations Desert Shield and Desert Storm demonstrated the effectiveness of our Armed Forces when the efforts of the various service commands and units are truly integrated.

The Goldwater-Nichols Act established certain standards and criteria for a "joint tour" of duty. Those standards are essential to ensure that individual officers receive the peacetime exposure to joint matters that is necessary to function effectively during combat. During Operations Desert Shield and Desert Storm, many officers served in positions that involved the planning for or the execution of efficient integration of land, sea, and air forces. Moreover, these operations were planned and executed in the intense environment of anticipated or actual combat.

The assignment of officers in the Persian Gulf combat zone during Operations Desert Shield and Desert Storm,

however, did not generally meet the requirements of existing law for a joint tour of duty. This legislation would provide a considerable degree of flexibility to allow the granting of credit for a joint tour of duty for officers who served in the Persian Gulf combat zone. The legislation would establish the requirement that an officer must have served in an assignment that provided significant experience in joint matters or involved frequent professional interaction with units and members of another service or an allied armed force.

Mr. President, I urge prompt consideration and passage of this bill, and 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. 2525

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF.

(a) DESIGNATION AS A MEMBER OF THE JOINT CHIEFS OF STAFF.—Section 151(a) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) The Vice Chairman.".

(b) CONFORMING AMENDMENTS.—(1) Section 154 of such title is amended—

(A) in subsection (c), by striking out "such" and inserting in lieu thereof "the duties prescribed for him as a member of the Joint Chiefs of Staff and such other";

(B) by striking out subsection (f); and

(C) by redesignating subsection (g) as subsection (f).

(2) Section 155(a)(1) of such title is amended by striking out "and the Vice Chairman."

SEC. 2. JOINT DUTY CREDIT FOR EQUIVALENT DUTY IN OPERATIONS DESERT SHIELD AND DESERT STORM.

(a) IN GENERAL.—(1) The Secretary of Defense, upon a recommendation made in accordance with paragraph (3), shall credit an officer of the Armed Forces of the United States who has completed service described in paragraph (2) as having completed a full tour of duty in a joint duty assignment for the purposes of chapter 38 of title 10, United States Code.

(2) Paragraph (1) applies to any officer who, after August 1, 1990, and before October 1, 1991, performed service in an assignment in the Persian Gulf combat zone that—

(A) provided significant experience in joint matters; or

(B) involved frequent professional interaction of that officer with (i) units and members of any of the armed forces other that the officer's armed force, or (ii) an allied armed force.

(3) The Secretary shall take action under paragraph (1) in the case of any officer if that action is recommended, with the concurrence of the Chairman of the Joint Chiefs of Staff, by the Chief of Staff of the Army (for an officer in the Army), the Chief of Naval Operations (for an officer in the Navy), the Chief of Staff of the Air Force (for an officer in the Air Force), or the Commandant of the Marine Corps (for an officer in the Marine Corps).

(b) INAPPLICABILITY OF CERTAIN REPORTING AND POLICY REQUIREMENTS.—Officers for whom joint duty credit has been granted pursuant to subsection (a) shall not be counted for the purposes of paragraphs (7), (8), (9), (11), or (12) of section 667 of title 10, United States Code, and subsections (a)(3) and (b) of section 662 of such title.

(c) INFORMATION ON EXERCISE OF AUTHORITY TO BE INCLUDED IN FISCAL YEAR 1993 ANNUAL REPORT.—The annual report submitted to Congress by the Secretary of Defense for fiscal year 1993 under section 113(c) of title 10, United States Code, shall include the following information:

(1) The total number of officers granted joint duty credit pursuant to subsection (a).

(2) The total number of such officers for each armed force.

(3) The total number of officers in each grade and each occupational specialty who has been granted joint duty credit pursuant to subsection (a).

(4) For each armed force, the total number of such officers in each grade and each occupational specialty who have been granted such credit.

(d) DEFINITIONS.—In this section:

(1) The term "joint matters" has the meaning given such term in section 668(a) of title 10, United States Code.

(2) The term "Persian Gulf combat zone" means the area designated by the President as the combat zone for Operation Desert Shield, Operation Desert Storm, and related operations for purposes of section 112 of the Internal Revenue Code of 1986.

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. MCCAIN, Mr. MURKOWSKI, Mr. DURENBERGER, Mr. SIMON, Mr. KASTEN, Mr. DASCHLE, Mr. HATCH, Mr. PRYOR, Mr. REID, and Mr. INOUYE):

S. 2526. A bill to amend the Congressional Budget Act of 1974 to provide for truth in budgeting with respect to intragovernmental transactions involving trust funds; pursuant to the order of August 4, 1977, referred jointly to the Committee on the Budget and the Committee on Governmental Affairs.

TRUTH IN BUDGETING ACT

• Mr. PACKWOOD. Mr. President, three times Congress has passed laws to take Social Security out of the budget. Nevertheless, OMB continues to count it in the budget totals, thereby using Social Security surpluses to hide other Federal spending.

Our budget is like a shellgame. We use slight of hand when we portray Social Security's budget. The Social Security trust fund receives more revenue than it spends, and we need to show that when we lay out the budget. We in Congress need to respect the integrity of Social Security and leave its trust fund alone. The bill I am introducing today, the Truth in Budgeting Act, would ask that the budget be shown for what it is—that we fully detail the money Social Security takes in.

Current Federal accounting practices provide incentives to cut programs financed through trust funds, even though these programs are now generating more revenue than they pay out in benefits. Because trust fund programs are included in budget totals, cuts in these programs appear to reduce the overall deficit. And because cuts in trust fund programs also increase the reserves in these programs, they provide the Government with a captive source of funds to borrow to cover general fund deficits, since trust fund reserves can only be invested in Government securities.

In addition, the interest the Government pays to trust funds on the money it has borrowed does not show up in the bottom line of the Federal budget. The interest paid to the trust funds is subtracted from total interest payments in arriving at the Federal budget totals, making it appear that the Government owes significantly less interest than is actually the case. This accounting procedure hides the role the trust funds play in financing the deficit. Furthermore, it makes the Federal Government's liability to pay interest on the Nation's debt appear significantly smaller.

The Truth in Budgeting Act will make three accounting changes to more accurately portray revenue and spending from Social Security and other mandatory trust funds. Essentially, my budgeting proposal will offset the mandatory trust fund outlays by including the payroll tax receipts, interest the trust funds receive, and contributions from the Government as employer. The Truth in Budgeting Act is intended to end the practice of using the Social Security surpluses to mask the deficit.

It is time to end the gimmickry and provide clarity in budgeting. The Truth in Budgeting Act is a step in that direction. I am encouraged by the show of support this bill has received from the 12 original cosponsors. I would also like to acknowledge the contributions of the National Committee to Preserve Social Security and Medicare in helping me develop the Truth in Budgeting Act. I encourage my colleagues to join me in cosponsoring this important bill.•

• Mr. MCCAIN. Mr. President, today I join my colleagues, Senators PACKWOOD, LAUTENBERG, MOYNIHAN, MURKOWSKI, DURENBERGER, SIMON, KASTEN, DASCHLE, HATCH, PRYOR, REID, and BREAUX in introducing the Truth in Budgeting Act of 1992. This legislation is of critical importance to all Americans. Let me begin by explaining exactly what this legislation does.

First, the bill would ensure that the balances of the trust fund for Social Security, Medicare, and other related Government programs are not used to mask the size of the Federal budget deficit.

Second, this legislation would ensure that the Federal budget reflects the interest owed to these trust funds. The

special Government securities that the trust fund balances are invested in are purchased from revenue from these programs are the soundest and safest investment possible. This legislation clarifies and confirms the Government's obligation to pay the interest on those bonds.

Third, the Truth in Budgeting Act requires that the payments the Federal Government makes to the trust funds on behalf of its employees are treated the same way as the contributions of all employers in calculating the Federal budget.

Mr. President, one of the first votes I took as a Member of Congress in the House of Representatives was to enact legislation based on a series of recommendations made by an independent commission to save the Social Security system from impending bankruptcy. As a result of action taken then, the Social Security system is now on the firmest financial footing it has ever been and will remain so well into the next century. But, Mr. President, there is a problem. The Federal Government has been unable or unwilling to do one thing that the American people want and that I have continued to fight for: stop the practice of calculating revenue from this and other trust funds as part of general revenue in order to make the Federal budget deficit look smaller. Mr. President, using trust funds to hide the true size of the deficit is simply dishonest.

Mr. President, our Nation faces an enormous Federal budget deficit. In fact, if this legislation is enacted into law, the deficit will look even bigger. But, in my view, the first step toward addressing the deficit is to be honest about the way it is calculated. Let me be clear, the legislation does not increase the size of the deficit because it forces new spending. Instead, the budget deficit will look bigger because we will finally be honest about the full extent of our obligations.

Mr. President, if the American people lack anything, it is confidence in the Congress of the United States. I regret to say that, to a large extent, I have to agree. First, we have the problem with how the trust fund balances are handled in the budget process. In addition, every time I have come to the Senate floor in an attempt to reform the budget process, my efforts have been thwarted by a majority in the Senate who seem to favor the business as usual, tax and spend policies that have incensed the American people and put us in the very position we find ourselves in today.

Mr. President, there has to be a better way. When the Congress is unwilling to provide the President with a line-item veto to cut the fat from Government spending, and is unwilling to commit itself to making efforts to reduce spending before it raises taxes—both proposals which I offered but were defeated—you know there's something wrong. Mr. President, the American people want a fundamental change in the way we do business around here, and I, for one, will continue to fight for that.

The Congress alone is responsible for our Nation's huge deficit. We have mortgaged the future of our children and grandchildren. We must now put budget gimmickery aside and do what is right.

In the meantime, we can take a step in the right direction by restoring confidence in a program that affects every American, working or retired: the Social Security system.

Mr. President, the American people would like to see the actions of their Congress brought into the sunlight of public scrutiny. I support that desire, and that's why I am a cosponsor of this legislation. Let us bring truth and honesty to the budget process and let's make good on our commitment not just to today's retirees but to today's workers as well, who are paying into a system that they will be able to count on later in life.●

● Mr. DURENBERGER. Mr. President, I am pleased to join with my colleagues in introducing the Truth in Budgeting Act of 1992. While some of the cosponsors of this legislation serve with me on the Finance Committee, all of the sponsors share the same concern about the Nation's continuing operating deficits. This legislation will help bring into greater focus the severity of the Nation's fiscal problems, the resources which are drained by it, and the size of the burden we are piling on our children.

Truth in budgeting means that our annual operating deficits and national debt will no longer be masked by budgetary gimmicks in accounting for receipt of revenues dedicated to trust funds, such as Social Security, Medicare, unemployment trust fund, railroad retirement, and several others.

It disturbs me that budget deficits do not play a more prominent part in the debate on our Nation's budget and national priorities. When the President's 1,500-page budget was released earlier this year, I tried to find out the real interest costs necessary for servicing our debt. I looked on page 25 in part 1 of the budget at the chart entitled "Outlays, Revenues, and Deficits." What I found on that chart was that fiscal year 1993 interest on the debt is $213 billion. But that is not the real cost of the national debt. That is the net cost of interest.

Hundreds of pages later in the budget, buried in a 10-column chart on page 14 of appendix 1, one finds the real interest costs associated with the debt—$315.8 billion.

It has been said before that, as a nation, we are bribing ourselves with our own money. These accounting gimmicks have perpetuated this deception.

Truth in budgeting will make three changes to the way in which the Government accounts for dedicated trust fund revenues. First, this bill will require that accounting for the benefit expenditures from trust funds be offset by the receipts from payroll taxes and other revenues going to the funds. Second, it will treat the interest owed on borrowed trust fund revenues in the same way as all other Government borrowing. Finally, truth in budgeting will require the Federal Government to assign the contributions which it makes to the trust funds on behalf of its employees in the same manner as taxes paid by private employers.

The Federal Government's propensity to minimize the true cost of budgetary imbalances by manipulating over $100 billion in trust funds will be substantially reduced by this legislation. Revenues in trust funds are required, by law, to be invested in Government securities. And, like all holders of Government debt, trust funds receive interest payments from the Government. Unlike the payments to other creditors, however, interest payments to trust funds are entered on the Government ledger, not as interest payments, but as intergovernmental transfers.

This is deceptive and inaccurate. Yet, the Nation continues to bury its head in the sand about the huge burden we have created for ourselves and our children.

By changing the accounting of trust fund revenues, truth in budgeting will underscore the stability of these critical dedicated trust funds, while reducing the incentives to cut benefits offered through these important programs. Since trust funds are counted against the deficit, cutting benefits has the appearance of reducing the deficit. In reality, the funds are self-financing. Social Security, for example, continues to collect more in contributions than it currently pays out in benefits. Because these reserve funds are critical to the future stability of the Social Security Program, they ought to be protected and accounted for as accurately as possible.

I commend Senator PACKWOOD for his leadership in this important issue. I hope that many more of our colleagues will join us in this effort to define the reality of our continuing budget crisis.●

By Mr. ADAMS (for himself, Mr. BRADLEY, and Mr. GORTON):

S. 2527. A bill to restore Olympic National Park and the Elwha River ecosystem and fisheries in the State of Washington; to the Committee on Energy and Natural Resources.

ELWHA RIVER ECOSYSTEM AND FISHERIES RESTORATION ACT

● Mr. ADAMS. Mr. President, I am introducing today, along with my colleagues Senators BRADLEY and GORTON, legislation to resolve the controversy

and economic uncertainty surrounding the possible relicensing of the hydropower projects on the Elwha River in Washington's Olympic Peninsula.

This is an extremely important bill to the people in this area. It is important to their jobs, the economy, the environment and the Lower Elwha Tribe. The negotiation of this legislative solution will enable all parties to avoid the adversarial nature of litigation and of the Federal Energy Regulatory Commission licensing process.

As with any legislation, I am sure it will require and benefit from further modifications. I want to assure all those who have been involved that it is my intent to continue seeking their input to further refine and perfect this bill.

All parties are to be commended for participating in such a cooperative and innovative manner. I especially wish to thank Senator BRADLEY and his staff for their contribution to this legislation.

The key to resolution of the conflicts was the agreement by Daishowa and James River, the owner of the dams and largest employer on the Olympic Peninsula, to relinquish all ownership in the projects in exchange for electric power delivered at a cost comparable to what they would have paid had the projects been relicensed. Using such a cost of doing business approach avoided all of the issues and precedents that would have been involved in a Federal buyout of the facilities. Under this approach, the companies agreed to relinquish all asset and intangible values in exchange for a comparable source of power.

Federal acquisition of the projects will not only terminate the controversy over FERC authority and impacts on the Olympic National Park, but will also provide the Department of the Interior with the opportunity to substantially further the Federal Government's salmon restoration efforts in the Pacific Northwest.

The major areas of controversy include:

Pending litigation over the Federal Energy Regulatory Commission's jurisdiction to license projects within national parks;

Potential legislation to prohibit FERC licensing of projects with national parks;

Potential tribal claims for loss of cultural and economic values associated with submerged creation sites and loss of salmon runs;

High capital costs and substantial uncertainty of fish and wildlife mitigation that would be required if the projects were relicensed;

Problems with declining and endangered salmon stocks throughout the Pacific Northwest.

The estimated cost of the bill, including anticipated removal of the dams, is $60 to 80 million with the majority of such costs to be incurred in years 5 through 15. This total compares favorably with Federal investments in salmon restoration in other Pacific Northwest river basins. For example, the Bureau of Reclamation has spent approximately $50 to $60 million on just fish screens and ladders in the Yakima River basin. Additional costs from other agencies for planning, hatcheries, and habitat improvements raise the figure to approximately $100 million. Comparable or higher amounts have been or are authorized for expenditure in the Umatilla River basin in Oregon and the Upper Snake in Idaho.

The return on investment in the Elwha is expected to meet or exceed that in other basins. Salmon returns are expected to be in the 150,000 to 400,000 range due to the high productivity of the virtually pristine Elwha watershed and the historic diversity and quantity of salmon produced from that basin.

SUMMARY OF MAJOR PROVISIONS

ELECTRIC POWER RATES

The Bonneville Power Administration will be used as the mechanism to deliver replacement power to Daishowa through the Port Angeles municipal utility. All costs to BPA of providing this service will be deducted from BPA's repayment obligation and thus will be "ratepayer neutral."

The cost of power to Daishowa was negotiated based on the costs the company would have paid had the project been relicensed with extensive fish, wildlife, and recreation mitigation measures required by FERC. The costs include all past, present, and future mitigation, operation, and maintenance costs that would have been incurred. The rate Daishowa will pay is close to the current BPA rate, which is what was predicted in the FERC draft environmental impact statement.

Daishowa's preferred rate will be indexed to inflation so as to mimic the costs the company would have paid under the hypothetical relicense-plus-mitigation scenario. The indexed rate will apply for a 40-year period which was the negotiated hypothetical license period.

The amount of power the company will receive is limited to the capacity of the projects. There will also be a monthly cap on the company's ability to claim power at the preferred rate to reflect the fact that the projects are virtually run-of-the-river, leaving only marginal ability to schedule power to offset BPA's higher demand charges during peak load periods.

ACQUISITION OF PROJECTS

After execution of the contract with BPA and the Port Angeles utility to provide replacement power to Daishowa, the Secretary of the Interior is authorized and directed to accept title to the projects, including all property and all other rights and interests and any power that may be produced by the projects. The Federal Government will assume liability for dam safety but not for any claims against the companies for past fish and wildlife losses.

Upon transfer of title to the projects, the Bureau of Reclamation will operate the projects to maximize fisheries and wildlife values until completion of a long-term operating plan. Any power generated at the projects after transfer to Federal ownership will be incidental and subordinate to fish and wildlife purposes so as to protect the Federal investment in fish and wildlife restoration.

It is not possible to deliver any power generated at the projects into the public power grid because the transmission lines from the projects connect only to the Daishowa Mill. Any power generated during Federal ownership will therefore be delivered to the Daishowa Mill and the value of such power will be credited against the reduction in BPA's repayment obligation.

FISHERIES AND WILDLIFE RESTORATION

After Federal acquisition of the projects, the Secretary of the Interior shall convene a task force comprised of all of the Federal, State, and local entities and parties. The task force shall conduct a comprehensive, multidisciplinary analysis of the alternatives for achieving restoration of fisheries and wildlife, protection of water quality, restoration of the Olympic Park ecosystem, and the other purposes of the act.

The task force shall prepare a plan based on its findings and make a recommendation to the Secretary. Upon approval of the plan, the Secretary is authorized and directed to implement the plan, including authority to remove the projects.

WATER QUALITY PROTECTION

The Secretary is authorized and directed to take all steps necessary to protect water quality for all Elwha water users, primarily the city of Port Angeles and the Dry Creek Water Association. Such actions shall be taken prior to any restoration actions that may adversely affect water quality.

DISPOSITION OF PROJECT LANDS

The project lands within the boundaries of the Olympic National Park shall become part of the Park.

The river corridor lands acquired at the lower project, and determined by the Secretary to be necessary for protection of the Federal investment in restoration, shall be designated as a U.S. Fish and Wildlife Refuge within the Refuge Administration System. Remaining lands shall be exchanged or held by the Secretary in trust for the Lower Elwha Tribe to provide lands for tribal housing and economic development purposes.●

By Mr. AKAKA (for himself, Mr. CRANSTON, Mr. DECONCINI, Mr. DASCHLE, and Mr. INOUYE):

S. 2528. A bill to amend chapter 37 of title 38, United States Code, to establish a pilot program for furnishing housing loans to Native American veterans, and for other purposes; to the Committee on Veterans' Affairs.

NATIVE AMERICAN VETERANS' HOME LOAN EQUITY ACT

• Mr. AKAKA. Mr. President, on behalf of myself and Senators CRANSTON, DECONCINI, DASCHLE, and INOUYE, I am today introducing the Native American Veterans' Home Loan Equity Act of 1992. This legislation would establish, within the Department of Veterans Affairs, a 5-year pilot program of direct loans to native American veterans—including American Indians, native Hawaiians, Pacific Islanders, and Alaskan Natives—to purchase, construct, or improve housing on U.S. trust lands. The measure would create a special revolving fund to provide the funds necessary to carry out the pilot program, and authorizes $5 million in appropriations for fiscal year 1993.

Our bill would permit VA to make loans of as much as $80,000 to a qualifying veteran, at interest rates no greater than that charged for VA-guaranteed loans, with the veteran to pay closing costs and loan-origination expenses. Because of the diversity of the native American population and the conditions under which they live, the bill would require VA to test the program in a variety of geographic areas and economic circumstances. The Secretary would be required to consider the overall purpose of the legislation—encouraging opportunities for home ownership on reservations—in developing underwriting requirements for the program. The measure would require VA to enter into agreements with tribal organizations to protect the financial interests of veterans and the Federal Government alike, including provisions for the foreclosure and resale of property in the event of default.

Mr. President, under the VA home loan guaranty program, qualified veterans are able to purchase, construct, or improve housing, including newly constructed, previously occupied, and manufactured homes. Currently, VA generally guarantees up to $36,000 of a veteran's home loan; based on this guaranty, in lieu of the substantial downpayment and other investment safeguards applicable to conventional mortgage transactions, private lenders issue loans for up to four times that amount, or $144,000. For loans exceeding $144,000, VA may guarantee up to $46,000, for an effective top loan rate of $184,000.

As my colleagues know, the VA home loan program was established in 1944 as a means of diminishing the economic and sociological readjustment problems faced by millions of service persons returning from the war. The mortgage guaranty allowed veterans, whose military service precluded the opportunity to save for a downpayment and establish favorable credit ratings, to obtain home loans that they would not have been able to qualify for otherwise, unlike those who did not serve in the Armed Forces. As the program developed over the years, it evolved from one viewed as an immediate adjustment aid to a long-range benefit that could be utilized many years after a veteran's period of active service.

Few programs have had such a lasting and wide-ranging impact on society and the economy as VA's home loan program. According to VA, from its inception at the end of World War II through March 1991, the VA guaranty has resulted in private lenders extending approximately $356.2 billion in mortgage loans to over 13.1 million veterans. In 1990 alone, VA guaranteed nearly 200,000 loans totaling more than $15 billion. Many of these veterans would not have qualified for conventional loans. The beneficial terms of VA-guaranteed loans also induced a competitive liberalization of the terms on conventional mortgages, whose recipients have benefited as well, according to VA's history of the program.

Unfortunately, the guaranty program, which has made the dream of home ownership come true for millions of veterans, and indirectly assisted millions of nonveterans through lowered loan terms, has not benefited American Indians, native Hawaiians, Native Alaskans, Pacific Islanders, and other Native peoples who reside or wish to reside on reservations or other trust lands. Indeed, to the best of our knowledge, since the beginning of the home loan program, not a single native American veteran living on U.S. trust lands has been able to utilize his or her VA home loan guaranty entitlement.

A recent, congressionally mandated VA study, conducted under contract by Booz Allen & Hamilton, found that, in 1988, out of a total of 21,204 American Indian veterans living on trust lands, only 15 had been able to utilize VA home loan programs—a participation rate of just 0.07 percent. This is compared to a participation rate of 0.67 percent for all veterans and a 0.96 percent rate for all Indian veterans. In fact, the authors of the report believe that all 15 of these loans represented the total number of loans made during the entire period 1961–1977. More egregious still, the report suggests that these 15 loans were direct loans for specially adapted housing for handicapped veterans, not ordinary VA-guaranteed home loans.

Mr. President, while frighteningly low in itself, the home loan utilization rate cited by the Booz Allen study for American Indian veterans on reservations is, if anything, greatly understated. In its 1988 report, the VA Advisory Committee on Native American Veterans believes that as many as half, or nearly 80,000, of the 159,900 Indian veterans live on reservations. If this is true, the actual utilization rate for all VA home loans by this population falls to an incredibly low two one-hundredths of 1 percent.

But this is not the worst of it, Mr. President. As I noted earlier, the 15 loans referred to in the Booz Allen study were direct loans for disabled housing, not VA-guaranteed home loans. In fact, no one has been able to document a single VA-guaranteed home loan ever being issued to an Indian veteran on trust land. Nor has there been a single documented case of such a loan ever being made for any of the thousands of Native Alaskan, native Hawaiian, and Pacific Islander veterans who also live on U.S. trust lands, be they Alaska settlement lands, Hawaiian homelands, or communally owned "matai" lands. Thus, the effective utilization rate for these veterans is zero.

Mr. President, there are several reasons why Native Americans on trust lands cannot utilize their entitlement, including outright discrimination, lack of VA outreach, and the higher costs associated with administering and servicing loans on reservations. One of the most important reasons is simply that Indian reservations are among the most economically depressed areas of the Nation. It is not uncommon to find unemployment rates of 40, 50, or even 90 percent on some reservations. In such circumstances, without an income or credit history, veterans find it difficult, if not impossible, to meet lenders' minimum financial requirements, even if the services of private lending institutions were available.

But another major obstacle facing native American veterans in accessing home loan benefits is the legal status of trust lands. According to the Booz Allen study:

> The most significant reason that VA home loans are not made on trust land is that economic disincentives exist for lenders to pursue these types of loans. * * * The VA Home Loan Program is currently structured to provide an incentive for lenders to make loans to individual veterans purchasing their own home, using the land and house as security for the loan. If the land is not owned by the borrower, as is the case with tribal trust land, mortgage lenders have no security for the loan. The VA Program, and mortgage lending in general, is not structured to deal with the complexities of making mortgage loans on land with tribal or community ownership. In addition, issues relating to Native American government sovereignty, isolation of trust lands, and cultural issues make origination and servicing costly and logistically difficult to implement. Under the current VA Home Loan Program guidelines, no special provision is made for loan applications for homes on tribal trust land. This exposes lenders to additional risk because in the event of a foreclosure, the lender does not have clear recourse to taking possession of the property. This translates into a difficult, time consuming, and costly foreclosure process. Without some type of guaranty that a marketable title can be con-

veyed to the lender in the event of default, private lenders will not feel that they have adequate security to fund loans made on tribal lands.

Mr. President, it is clear from the foregoing that native American veterans who live or wish to live on trust lands, whether they are Navajos or Hawaiians or Samoans or Alaskans, are faced with circumstances that preclude them from obtaining VA home loan guarantees as effectively as if Congress had legally barred them from receiving the entitlement. Of course, some of these circumstances—such as endemic unemployment, the difficulties and costs to banks of servicing loans on reservations, and radical and cultural discrimination by lending institutions—cannot be addressed by this bill. Only when we as a nation experience a sea-change in our sense of moral and social responsibility to these forgotten peoples will these issues be resolved.

However, our bill does address the inhibiting effect that the legal status of trust land has on lenders' willingness to make loans. The legislation does this by substituting VA as the lender. Although we generally agree with policies taking the Federal Government out of the banking business, we also recognize that exceptions can and must be made when the private sector is unable or unwilling to serve this function. In the case of native American veterans on trust lands, the problem is so egregious, so beyond the capabilities of the private sector to address, that the Government is obligated to intervene.

In proposing that VA provide direct loans to veterans on trust lands, we are cognizant that there are many obstacles to the efficient administration of such a program, chiefly the physical, economic, and political diversity of U.S. trust lands. Approximately 52 million acres of land are held in trust by the United States for tribes and individuals; 40 million acres have been set aside for Alaskan Natives under the Alaska Native Claims Settlement Act; 200,000 acres have been secured for the benefit of native Hawaiians under the Hawaiian Homestead Act; and, virtually all of American Samoa is held in common by Samoan natives. In addition, American Indians alone comprise more than 500 federally recognized tribes of varying sizes, each with their own legal, political, and administrative practices. Finally, the different reservations exist in a wide variety of economic circumstances—some are large, well-endowed tribes in major urban regions; others are small, poor, and located in isolated rural areas.

To require VA to operate an inflexible direct home loan program in such vastly differing environments would be to doom such an initiative to failure. This is why our legislation is conceived of as a pilot program with great flexibility: We want to ensure that VA can make loans in diverse environments before we mandate a full-scale direct loan program. Our bill therefore specifically stipulates that VA make test loans to native Americans "who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances."

In consideration of this, we give significant latitude to VA in developing and carrying out the direct loan program with individual tribes. For example, the Secretary is required to negotiate with tribes on an individual basis to develop the conditions that apply to each veteran who is a member of that tribe, including loan processing, enforcement, and foreclosure proceedings. Our major stipulation is that, in order to protect the taxpayer, such memoranda of understanding include a provision that transfers to VA upon foreclosure a veteran's meaningful interest in the property—whether that is a life estate, a 50-year leasehold, or fee-simple ownership. This provision will give VA some ability to minimize VA losses in order to continue making these direct loans.

Mr. President, the bill we are offering today offers a practical first step to address a fundamental inequity in VA's home loan guaranty programs. Instead of offering a prescriptive solution to a knotty problem, we are giving VA a flexible mandate to develop pilot initiatives that are based on the complex, diverse realities that exist on U.S. trust lands across the Nation. We believe that this test approach is both fiscally and morally responsive to the needs of native American veterans, who ask only that they be able to use an entitlement that they earned through service to the Nation.

Before closing, I would like to note that this initiative has not been developed in isolation. VA; the Department of Housing and Urban Development; the Department of the Interior; the financial, thrift, and housing industries; and, the native American community offered valuable suggestions in the drafting of this measure. I assure my colleagues that we will continue to solicit the advice of all interested parties in improving this legislation.

I also want to recognize the individual who first brought the trust lands problem to the attention of Congress. I speak of my late predecessor, Senator Spark Matsunaga, who 3 years ago introduced the legislation upon which this bill is modeled. While Sparky's bill differed from ours in duration and scope—it would have established a 3-year pilot program to examine the feasibility of providing both direct and VA-guaranteed home loans on trust lands—its intent was exactly the same: To make VA home loan benefits available to veterans who, through no fault of their own, have been denied the use of their entitlement. Senator Matsunaga's bill was never adopted, but it did inspire enough interest in the subject that Congress enacted legislation in late 1989 requiring a comprehensive study of home loans for native Americans on trust lands—the Booz Allen study mentioned previously. If our bill is one day adopted, it will be in large measure due to the trailblazing efforts of the man whose seat this Senator now occupies.

Thank you, Mr. President. I urge my colleagues to cosponsor this important measure. I ask that a copy of the bill and a summary be printed in the RECORD following my remarks.

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

S. 2528

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 "Native American Veterans' Home Loan Equity Act of 1992".

SEC. 2. NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM.

(a) PROGRAM.—Chapter 37 of title 38, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

"§ 3761. Pilot program

"(a) The Secretary shall establish and implement a pilot program under which the Secretary may make direct housing loans to Native American veterans. The purpose of such loans is to permit such veterans to purchase, construct, or improve dwellings on trust land. The Secretary shall establish and implement the pilot program in accordance with the provisions of this subchapter.

"(b) In carrying out the pilot program under this subchapter, the Secretary shall, to the extent practicable, make direct housing loans to Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

"(c) No loans may be made under this subchapter after September 30, 1997.

"§ 3762. Direct housing loans to Native American veterans

"(a) The Secretary may make a direct housing loan to a Native American veteran if—

"(1) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; and

"(2) the memorandum is in effect when the loan is made.

"(b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:

"(A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter—

"(i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and

"(ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.

"(B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.

"(C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary—

"(i) to evaluate the advisability of the loan; and

"(ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

"(D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including—

"(i) procedures for foreclosing the interest; and

"(ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.

"(E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that the pilot program established under this subchapter is implemented in a responsible and prudent manner.

"(2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

"(c)(1) The principal amount of any direct housing loan made to a Native American veteran under this section may not exceed $80,000.

"(2) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

"(3) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction or improvement, and general acceptability relating to any direct loan made under this section.

"(d) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

"(e) Loans made under this section shall be repaid in monthly installments.

"(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

"(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may—

"(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

"(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

"(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

"(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

"§ 3763. Housing loan revolving fund

"(a) There is hereby established in the Treasury of the United States a revolving fund known as the 'Native American Veteran Housing Loan Fund' (hereafter in this subchapter referred to as the 'Fund').

"(b) The Fund shall be available to the Secretary to carry out all operations relating to the making of direct housing loans to Native American veterans under this subchapter, including any administrative expenses relating to the making of such loans. Amounts in the Fund shall be available without fiscal year limitation.

"(c) The Fund shall consist of such amounts as are appropriated to the Fund and all amounts received by the Secretary by reason of the direct housing loan pilot program carried out under this subchapter, including all collections of principal and interest, any loan fees, and any proceeds from the use of property held or sale of property disposed of pursuant to that program.

"§ 3764. Definitions

"For the purposes of this subchapter—

"(1) The term 'trust land' means any land that—

"(A) is held in trust by the United States for Native Americans;

"(B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

"(C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or

"(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

"(2) The term 'Native American veteran' means any veteran who is a Native American.

"(3) The term 'Native American' means—

"(A) an Indian, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a));

"(B) a native Hawaiian, as that term is defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 (Public Law 67-34; 42 Stat. 108);

"(C) an Alaska Native, within the meaning provided for the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

"(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

"(4) The term 'tribal organization' shall have the meaning given such term in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)) and shall include the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.".

(b) CONSULTATION.—In carrying out the direct housing loan pilot program authorized under subchapter V of title 38, United States Code (as added by subsection (a)) the Secretary of Veterans Affairs shall consider the views and recommendations, if any, of the Advisory Committee on Native-American Veterans established under section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388).

(c) CONFORMING AMENDMENT.—The table of sections of such chapter is amended by adding at the end the following new matter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

"Sec.
"3761. Pilot program.
"3762. Direct housing loans to Native American veterans.
"3763. Housing loan revolving fund.
"3764. Definitions.".

SEC. 3. ANNUAL REPORTS.

Not later than February 1 of each of 1994 through 1998, the Secretary of Veterans Affairs shall transmit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report relating to—

(1) the implementation of the Native American veterans direct housing loan pilot program established under subchapter V of title 38, United States Code (as added by section 2) during the period ending on September 30 of the year preceding the date of the report; and

(2) the Secretary's recommendations, if any, for legislation regarding the pilot program.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $5,000,000 for fiscal year 1993 for the Department of Veterans Affairs to carry out the Native American veteran housing loan pilot program established under subchapter V of title 38, United States Code (as added by section 2), which amount shall remain available without fiscal year limitation.

SUMMARY OF PROVISIONS OF NATIVE AMERICAN VETERANS' HOME LOAN EQUITY ACT OF 1992

The proposed "Native American Veterans' Home Loan Equity Act of 1992" would:

1. Establish a five-year pilot program of direct loans to Native American veterans to purchase, construct, or improve dwellings on trust lands.

2. Require that, to the extent practicable, the loans be made to eligible veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

3. Require that, before a loan is made to a veteran there be in effect a memorandum of understanding between VA and the tribal organization having jurisdiction over the veteran that ensures that (a) the veteran would have a meaningful interest in the trust land upon which the home is or will be located; (b) each veteran would convey to the Secretary the veteran's interest in the property as collateral for the loan; (c) VA would have access to the land in connection with the loan; (d) the tribal organization has established procedures for foreclosure and resale

of the property in the event of default by the veteran; (e) the tribal organization agrees to other terms and conditions the Secretary may require to carry out the loan program; and (f) the financial interests of the United States are otherwise reasonably protected.

4. Permit loans of up to $80,000, with an interest rate no greater than VA's interest rates for VA-guaranteed loans, and require the veteran to pay closing costs and loan-origination expenses or a fee representing these expenses.

5. Require the Secretary to establish special credit underwriting standards that take into account the purpose of the pilot program, which is to make available housing to Native American veterans living on trust lands.

6. Allow the Secretary to make cash advances in connection with construction or home-improvement loans.

7. Establish a "Native American Veterans Housing Loan Revolving Fund" to provide funds necessary to carry out the pilot program and authorize appropriations to the fund of $5 million for fiscal year 1993. (Under the Credit Reform Act of 1990, this appropriation represents the portion of loan disbursements made in FY 1993 that the government ultimately does not expect to recover. To illustrate, VA estimates that the subsidy rate for "vendee" loans, a type of VA direct loan, will be 8.4 percent for FY 1993. If the subsidy rate for loans under the pilot program is the same, a $5-million appropriation would allow VA to make loans totaling approximately $60 million.)

8. Define "trust land" as any land that is (a) held in trust by the United States for Native Americans; (b) subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (c) owned by a Regional Corporation or a Village Corporation, as those terms are defined in the Alaska Native Claims Settlement Act; or (d) on any island in the Pacific Ocean if the land is, by cultural tradition, communally owned land.

9. Define "Native American" as (a) an Indian, as defined in the Indian Self-Determination and Education Assistance Act; (b) a native Hawaiian, as defined in the Hawaiian Homes Commission Act; (c) an Alaska Native, within the meaning provided for the term "Native" in the Alaska Native Claims Settlement Act; and (d) a Pacific Islander, within the meaning of the Native American Programs Act of 1974.

10. Define "tribal organization" as having the meaning given to that term in the Indian Self-Determination and Education Assistance Act, including the Department of Hawaiian Homelands and such other organizations as the Secretary may prescribe.

11. Require the Secretary to submit to the Veterans' Affairs Committees on February 1, of 1994 through 1998, reports on implementation of the pilot program, including any recommendations by the Secretary for legislation regarding the pilot program.•

• Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am very pleased to be an original cosponsor of the proposed Native American Veterans' Home Loan Equity Act of 1992, which is being introduced by my good friend, a member of our committee, Senator AKAKA. I congratulate him on this bill, which I believe will make a significant contribution to removing the barriers that effectively have precluded native American veterans living on reservations and other trust lands from using VA home loan benefits that they have earned through service to their country.

The VA-Guaranteed Home Loan Program depends on private lenders to provide the mortgage loans. But native American veterans living on reservations or other trust lands cannot obtain direct ownership of the land upon which the home is or will be located because that land is held by the United States or a State in trust for a particular group of native Americans. Lenders, therefore, are not willing to make loans for homes on these properties because the potential borrower has no fee-simple interest to serve as collateral for the loan. Thus, the regular VA-Guaranteed Home Loan Program is out of reach of many native American veterans, a fact particularly troubling because native Americans serve in our military in disproportionately high numbers.

Mr. President, Senator AKAKA's bill builds on a foundation established by his distinguished predecessor and my friend, the late Senator Spark Matsunaga, who introduced a related bill in the 101st Congress, S. 1146. In the hope of obtaining more information on this problem before enacting corrective legislation, the Congress in 1989 required VA to conduct a study of the issues affecting the ability of native American veterans living on trust lands to participate in the VA loan program.

VA issued this report in July 1991. The report, entitled "Assessment of the Utilization of the VA Home Loan Benefit by Native American Veterans Living on Tribal Trust Land," was conducted by a VA contractor and, quite frankly, provided very little enlightenment. The report did confirm, however, that these veterans effectively are precluded from using their home loan guaranty entitlements and recommended the creation of a direct loan program for them.

The pilot program that Senator AKAKA's bill would establish will give VA the experience to determine whether and how a direct-loan program can work. It is a modest, innovative approach that leaves a great deal of flexibility for VA to tailor the program to the widely varying needs and circumstances of individual native Americans and native American groups. The bill requires VA to work out, with the cooperation and assistance of each tribal organization, arrangements for implementing and administering the program in a manner that provides reasonable protection for the Government's interest.

Mr. President, I look forward to working with Senator AKAKA on this legislation and urge all of my colleagues to support this important bill aimed at helping to ensure that all veterans have access to the benefits they earned while serving our country.•

By Mr. AKAKA (for himself and Mr. WALLOP):

S. 2529. A bill to provide for the transfer of certain lands to the Government of Guam, and for other purposes; to the Committee on Energy and Natural Resources.

TRANSFER OF CERTAIN LANDS TO THE GOVERNMENT OF GUAM

• Mr. AKAKA. Mr. President, on behalf of myself and Senator WALLOP, I am introducing the Guam Excess Lands Act. Our action comes at the request of Congressman BLAZ.

The bill introduced today would provide for the transfer of certain excess Federal lands to the Government of Guam. While I have a number of reservations about the content of this legislation, I am introducing it as a courtesy to Congressman BLAZ.

Many of us in Hawaii can remember the time when the only representation we had in Congress was a House Delegate. I am most sympathetic to this situation and feel that the proposals advanced by my House colleagues who represent U.S. territories deserve to be considered in the Senate as well.•

• Mr. WALLOP. Mr. President, I am pleased to join with Senator AKAKA in introducing legislation to dispose of certain excess lands in Guam at the request of Congressman BEN BLAZ. I hope that the Committee on Energy and Natural Resources will hold a hearing on this measure in the near future and that we will be able to bring it to the Senate as expeditiously as possible.

While I am not taking any position on the legislation itself at this point, I do understand how very important a resolution of the excess lands problem is for the people of Guam, and I want to congratulate Congressman BLAZ for his dedication and commitment to having this issue resolved and enacted this year.

I have a great deal of sympathy for the people of Guam and their desire to have full control over as much acreage as possible. Wyoming, as well as most of the Western States, have had to live with a dominating Federal presence which denies us the resources and options which Eastern States acquired through the disposal of the public domain. On an island the size of Guam, the problem becomes even more acute.

Congressman BLAZ has introduced this bill in every Congress since the 99th and has worked with all the interested parties in Guam and the Federal Government to resolve any problems. He has managed to have individual parcels transferred for public purposes, such as schools, but it is critical to Guam that an overall resolution can be found. During the last Congress, both the Senate and the House had agreed to legislation, but unfortunately it was held up by differences over other provisions in an omnibus territory bill. I sincerely hope that we can avoid that type of linkage this Congress and I

want to again express my admiration for the exceptional work which Congressman BLAZ continues to do for the people of Guam.●

By Mr. STEVENS (for himself, Mr. SPECTER, Mr. WOFFORD, Mr. DOLE, Mr. THURMOND, Mr. BYRD, Mr. BOND, Mr. BROWN, Mr. BURNS, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CRAIG, Mr. JOHNSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DOMENICI, Mr. DURENBERGER, Mr. GARN, Mr. GORTON, Mr. GRAMM, Mr. HATFIELD, Mr. HELMS, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KASTEN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PRESSLER, Mr. RUDMAN, Mr. SIMPSON, Mr. SMITH, Mr. SYMMS, Mr. WARNER, Mr. AKAKA, Mr. DECONCINI, Mr. GORE, Mr. HEFLIN, Mr. KOHL, Mr. LEVIN, Mr. MOYNIHAN, Mr. SASSER, Mr. SHELBY, Mr. RIEGLE, Mr. LIEBERMAN, Mr. BINGAMAN, Mr. GRASSLEY, Mr. ROCKEFELLER, and Mr. SANFORD):

S. 2530. A bill to establish the John Heinz Competitive Excellence Award; to the Committee on Banking, Housing, and Urban Affairs.

JOHN HEINZ COMPETITIVE EXCELLENCE AWARD ACT

Mr. STEVENS. Mr. President, Saturday, April 4, marks the first anniversary of the death of our colleague and a good friend of all the Members of the Senate, former Senator John Heinz.

In a letter written just hours before his tragic death, he expressed concern about the level of our Nation's competitiveness in the area of critical technology.

After the news of the tragic death of my friend, I came to the floor and indicated that I wished to draft legislation establishing a medal in honor of Senator Heinz and named after him.

At that time I read from his letter the following:

> Our constituents, many for the first time, learned the importance of smart bombs and other sophisticated semiconductor-based technology in the Persian Gulf. There is no doubt in my mind that the same kinds of advanced technology are likewise critical to our ability to compete internationally in the next century. Inevitably, political and military strength are directly related to economic strength. I believe we can only sustain our role in the world's polticial leadership if we maintain our economic leadership as well.

Only this week I have heard from Teresa Heinz, Mrs. Heinz. Let me quote just a paragraph of her personal letter to me. She said:

> I am anxious to see the establishment of the Heinz Competitiveness Award. What a fitting tribute this will make.

Today, to honor his memory and follow through on the comment I made a year ago, and to follow through on his goal of revitalizing the American spirit of competitiveness, I send to the desk and introduce legislation to establish the John Heinz Competitive Excellence Award.

Senator SPECTER and Senator WOFFORD and Senator DURENBERGER are here to join in introducing this measure. We are joined today by 46 cosponsors and would like to—47 cosponsors, I stand corrected, Mr. President. We are pleased to have Senator ROCKEFELLER join us.

We invite every Member of the Senate to join us in honoring our departed friend by cosponsoring this legislation.

Let me say that Mrs. Heinz and Senator Heinz' former staff have provided invaluable assistance to us as we crafted this legislation.

Under our legislation, the Senate would present two awards annually—one to an individual and another to an institution, organization, or business. Each winner would have demonstrated superiority in promoting U.S. industrial competitiveness in the international marketplace.

Technical innovation and improvement in competitive strategies would be the major criterion for consideration of this award.

The John Heinz Competitive Excellence Award would not only honor our colleague but help revitalize America's competitive spirit.

I am really proud of the bipartisan support that has been demonstrated here in the Senate to honor our former colleague in support of this legislation.

Mr. President, I yield, if I may to my senior colleague from Pennsylvania.

The PRESIDING OFFICER. The senior Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank our distinguished colleague, Senator STEVENS, for his leadership on this very important legislative proposal.

The John Heinz Competitive Excellence Award is a fitting memorial to a very distinguished U.S. Senator who did so much for competitive excellence in international trade.

This award will seek out an individual, organization, institution, or business which has demonstrated excellence in promoting U.S. industrial competitiveness.

Competitiveness was practically John Heinz' middle name.

He was an outstanding competitor in his business career. He was an extraordinary competitor in politics as he sought office for the House of Representatives and the U.S. Senate. He was an extraordinary competitor as a public servant. He was an extra extraordinary competitor in athletic events—skiing, tennis, for instance. I can personally comment about his spirit on the softball field as the John Heinz softball team competed with my office softball team year in and year out.

I recollect in his early days in the House of Representatives he received the award for being "king of the hill" in the combined athletic activities. He brought that sense of competitiveness with him to the U.S. Senate where his work on the Finance Committee and on the Banking Committee was very important in moving toward U.S. superiority and U.S. competitiveness abroad.

We miss him very much in our State, in our country, and in the entire world. As I have traveled through Pennsylvania during the course of the past year, I have heard frequent comments about how much the people of the State, who elected him on three occasions to the U.S. Senate, miss his service. Fifty-two weeks ago today, Thursday afternoon, his life was taken by a tragic accident. I think this legislative action is a partial recognition, partial memorial to a great American.

One further comment, Mr. President, as to how much we miss Senator Heinz. Three days ago, the voluntary restraint agreements lapsed. That program was testament to his accomplishments in seeing to it that the steel industry—specifically the specialty steel industry—was able to achieve international competitiveness through a program which he structured and saw that it was initiated.

I remember well the Saturday before the 1988 Presidential election at a rally in Chester County, PA, when Senator Heinz presented a letter to then Vice President Bush in the closing days of that campaign. Senator Heinz made a strong case to the President that the voluntary restraint program would be good for Pennsylvania steel, would be good for American steel, would be good for Vice President Bush and good for America generally.

It worked out exactly that way. As a result of that program, specialty steel has slimmed down, toughened up, become very competitive. I think if Senator Heinz were with us today, the voluntary restraint program would probably be carried on.

This award, Mr. President, will stimulate excellence in U.S. industrial competitiveness, and I think it is fitting on the anniversary of his passing in a tragic airplane accident, that we propose this legislation. I join my colleague, Senator STEVENS, in urging all Senators to cosponsor this. We will have speedy enactment of this bill. I thank the Chair and yield the floor.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The junior Senator from Pennsylvania.

Mr. WOFFORD. Mr. President, as one who has voted to do everything in his power to make some things good come out of the tragedy of the loss of John Heinz, I rise to join my colleagues in urging the establishment of the John Heinz Competitive Excellence Award.

As our hearts go out to Teresa Heinz and to John and Andre and Christopher, it is well that we do something practical to honor John Heinz's legacy.

And so the least we can do is go forward with this good idea of the excellence award.

This morning, as we heard the prayer from the visiting chaplain, I thought of John Heinz and his legacy, as I often do. I realize that he was a man who lived up to what the chaplain asked us to do. Rabbi Slosberg, my colleagues will recall, prayed that we be given the courage and the strength of conviction to fulfill the vision expressed by the Prophet Micah:

He has told you, "O man, what is good and what the Lord requires of you, only to do justice and to love goodness and to walk humbly with your God, then will your name achieve wisdom.

John Heinz was a man who had that vision. He sought what is good; he did justice; he loved goodness and the common good; he achieved wisdom. May we and all those who in the future win the John Heinz Competitive Excellence Award do our best to do the same.

Mr. DURENBERGER. Mr. President, I rise to extend my congratulations first to the author of this legislation. There were a lot of us who were left bewildered by the loss of John Heinz and a lot of us were trying to figure out what to make of it, what to say about it. It was TED STEVENS who hit the nail on the head, so to speak, here a year later presenting all of us with an opportunity to memorialize what we remember best about John Heinz, and that is, as has been said by others, his competitiveness.

So I take this occasion, as part of the larger family John had, to thank Teresa and the rest of his family for the opportunity to have shared this period of John's life.

As others have said many times, John Heinz was a man who had everything, but he gave everything. I think about that in many ways. I think about it at the present time as I look at the Presiding Officer presiding over the Senate. This is a body inhabited largely by millionaires, multimillionaires, people, some of whom carry names rich in tradition, but most of them, to me, since I do not fall in that category, I end up admiring greatly because they are people who by many people's standards have everything and yet they choose a position like this from which one of the very few places in the world they can give everything. That not only includes themselves, it includes their families. It includes the tragedy that comes with a sudden loss, circumstances over which we have no control.

I ask unanimous consent that two wonderful homilies by another one of our colleagues who bears certainly the famous name, rich tradition, who like many around here represent what people who have everything come here to do, JACK DANFORTH, both of those homilies, that all of us listened to—one in Pittsburgh on the 10th day of April, and the other here at the National Cathedral on the 12th day of April—when available be reprinted in the RECORD as part of my remarks in cosponsoring this legislation.

Mr. STEVENS. Mr. President, I think the Senate realizes that I had an experience quite similar to Teresa Heinz. It was a little bit different in that I was in the airplane which crashed and resulted in the death of my wife. I felt very close to Teresa Heinz for that reason, and I have in mind now the real tragedy that follows the loss of a spouse.

Senator DURENBERGER has just indicated that many of us put our own lives and the lives of our families at risk as we engage in the pursuits of the Senate. John Heinz was a close friend of everyone here. He was a man that left his mark on the Senate, and I have a great feeling that had he lived he would have left an even greater mark on our democracy, our union of States.

I really feel that it is sad that we will not be in session on the anniversary of Senator Heinz' death, and I am pleased that Senator DURENBERGER will have placed in the RECORD the two great statements made by Senator DANFORTH.

My sadness that we will not be in session is that I wish we could all be present here in the Senate, and be presented with a prayer in his honor. It is not fitting at this time, I think, to ask the Senate to do that. But I want the Senate to know that the feelings that we have with regard to our late departed friend are very strong in the hearts and minds of many of us now.

It is with a deep sadness that I have brought this bill to the floor in one respect, and yet with great joy in another sense because it has the blessing of John Heinz' family. It is something that we have waited to do until we had an indication that it was timely from the point of view of Teresa Heinz and her family that we take this action.

It is time now. It is amazing how fast time passes, but I do think that it is a subject that we should work on, we should try to get passed, and enacted into law as soon as possible.

I make these last remarks just to indicate that to many of us John represented a man of deep faith, a man of deep conviction to our country, and certainly unlimited commitment to his family. It was his commitment to his country that we try to honor in this legislation.

I again urge that everyone in the Senate who is willing to do so join in cosponsorship of it. It is my understanding it will be referred to the Banking Committee, and I intend to pursue that and see if we can get that legislation back here and enacted as quickly as possible.

I thank the Chair. I thank the leader for allotting us this time, and to my good friend for yielding.

Mr. DOLE. Mr. President, 1 year ago this Saturday, America lost one of her finest public servants, with the tragic death of our colleague, John Heinz.

Those of us who were privileged to serve with Senator Heinz knew him to be a uniquely effective Senator—a Senator who saw Government not as a game, but as a calling—a Senator who entered the public arena, not out of ambition, but out of duty.

When I look at the issues which are on top of the public agenda today—health care, economic growth, care for our elderly—I think of how much Senator Heinz contributed to each of these issues, and how much his wisdom and leadership is missed.

Many tributes were paid to Senator Heinz following his death. And Senator STEVENS is to be congratulated for his proposal creating the Heinz Competitive Excellence Award.

Perhaps the most fitting tribute we could pay to Senator Heinz' memory is to tackle the issues he did with the same determination and common sense he displayed throughout his career.

I know that all the Members of this body join with me in remembering our friend and colleague today, and in telling Teresa, John, Andre, and Christopher, that they remain in our thoughts and prayers.

Mr. THURMOND. Mr. President, I am pleased to join today with Senator STEVENS and others in introducing legislation to establish the "John Heinz Competitive Excellence Award." This will serve as a fitting tribute to his memory.

John Heinz was a man of great character, commitment, and ability. During his tenure in the Senate, he was a champion of older Americans. John was also deeply concerned about the ability of this great Nation to compete internationally in the next century. Before his untimely death, he had taken steps to organize a working group to examine competitiveness problems and the role of the Government in addressing this issue. The award that this bill establishes will put the Congress on record as supporting private sector efforts to find ways to compete internationally.

As we remember John Heinz on the first anniversary of his passing, this award will serve as a lasting reminder of his commitment to his State and the Nation.

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. WELLSTONE, his name was added as a cosponsor of S. 4, a bill to amend titles IV, V, and XIX of the Social Security Act to establish innovative child welfare and family support services in order to strengthen

families and avoid placement in foster care, to promote the development of comprehensive substance abuse programs for pregnant women and caretaker relatives with children, to provide improved delivery of health care services to low-income children, and for other purposes.

S. 15

At the request of Mr. BIDEN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 15, a bill to combat violence and crimes against women on the streets and in homes.

S. 240

At the request of Mrs. KASSEBAUM, the names of the Senator from Montana [Mr. BURNS] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 240, a bill to amend the Federal Aviation Act of 1958 relating to bankruptcy transportation plans.

S. 757

At the request of Mr. LEAHY, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 757, a bill to amend the Food Stamp Act of 1977 to respond to the hunger emergency afflicting American families and children, to attack the causes of hunger among all Americans, to ensure an adequate diet for low-income people who are homeless or at risk of homelessness because of the shortage of affordable housing, to promote self-sufficiency among food stamp recipients, to assist families affected by adverse economic conditions, to simplify food assistance programs' administration, and for other purposes.

S. 765

At the request of Mr. BREAUX, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer social security taxes on cash tips.

S. 1257

At the request of Mr. BOREN, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1423

At the request of Mr. DODD, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1565

At the request of Mr. GRAHAM, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1565, a bill to amend the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in connection with route transfers.

S. 1691

At the request of Mr. DIXON, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1691, a bill to amend title 18, United States Code, to govern participation of Federal Prison Industries in Federal procurements, and for other purposes.

S. 1883

At the request of Mr. HOLLINGS, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Arkansas [Mr. BUMPERS], the Senator from Wisconsin [Mr. KOHL], the Senator from Washington [Mr. GORTON], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 1883, a bill to provide for a joint report by the Secretary of Health and Human Services and the Secretary of Agriculture to assist in decisions to reduce administrative duplication, promote coordination of eligibility services and remove eligibility barriers which restrict access of pregnant women, children, and families to benefits under the food stamp program and benefits under titles IV and XIX of the Social Security Act.

S. 2027

At the request of Mr. CHAFEE, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2027, a bill to amend title XVIII of the Social Security Act to eliminate the annual cap on the amount of payment for outpatient physical therapy and occupational therapy services under part B of the medicare program.

S. 2064

At the request of Mr. HATFIELD, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2064, a bill to impose a one-year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period.

S. 2100

At the request of Mr. DASCHLE, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 2100, a bill to amend the Internal Revenue Code of 1986 to encourage the development of renewable energy and the conservation of energy, and for other purposes.

S. 2236

At the request of Mr. SIMON, the names of the Senator from Iowa [Mr. HARKIN] and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of S. 2236, a bill to amend the Voting Rights Act of 1965 to modify and extend the bilingual voting provisions of the Act.

S. 2345

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2345, a bill to extend the provisions of the Steel Import Stabilization Act for specialty steel and other purposes.

S. 2387

At the request of Mr. LEAHY, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2387, a bill to make appropriations to begin a phase-in toward full funding of the special supplemental food program for women, infants, and children [WIC] and of Head Start programs, to expand the Job Corps program, and for other purposes.

S. 2388

At the request of Mr. MCCAIN, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 2388, a bill to provide for a Democracy Corps to mobilize and coordinate the expertise and resources of United States citizens in providing targeted assistance to support the development of democratic institutions and free market economies in the former Soviet republics and the Baltic states.

S. 2490

At the request of Mr. SASSER, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 2490, a bill to provide that employees of the Tennessee Valley Authority who are covered by a collective bargaining agreement shall not be subject to any regulations which take employee efficiency or performance ratings into account in determining the order of retention of competing employees in a reduction in force.

S. 2503

At the request of Mr. SIMON, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2503, a bill to amend the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, to make available additional funds to the Department of State for the United States contributions to international peacekeeping activities.

SENATE JOINT RESOLUTION 18

At the request of Mr. SIMON, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Joint Resolution 18, a joint resolution proposing an amendment to the constitution relating to a federal balanced budget.

SENATE JOINT RESOLUTION 166

At the request of Mr. DOLE, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 248

At the request of Mr. CONRAD, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Joint Resolution 248, a joint resolution designating August 7, 1992, as "Battle of Guadalcanal Remembrance Day."

SENATE JOINT RESOLUTION 252

At the request of Mr. DIXON, the names of the Senator from Iowa [Mr.

GRASSLEY] and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of Senate Joint Resolution 252, a joint resolution designating the week of April 19–25, 1992, as "National Credit Education Week."

SENATE JOINT RESOLUTION 257

At the request of Mr. LAUTENBERG, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of Senate Joint Resolution 257, a joint resolution to designate the month of June 1992, as "National Scleroderma Awareness."

SENATE JOINT RESOLUTION 261

At the request of Mr. CRANSTON, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Rhode Island [Mr. CHAFEE], the Senator from New York [Mr. MOYNIHAN], the Senator from Michigan [Mr. RIEGLE], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Indiana [Mr. COATS], the Senator from Wyoming [Mr. SIMPSON], the Senator from Nevada [Mr. REID], the Senator from Iowa [Mr. GRASSLEY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from North Carolina [Mr. SANFORD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Tennessee [Mr. SASSER], the Senator from Tennessee [Mr. GORE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Ohio [Mr. GLENN], the Senator from Michigan [Mr. LEVIN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from California [Mr. SEYMOUR], the Senator from Nevada [Mr. BRYAN], the Senator from Florida [Mr. MACK], the Senator from Montana [Mr. BURNS] and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of Senate Joint Resolution 261, a joint resolution to designate April 9, 1992, as a "Day of Filipino World War II Veterans."

SENATE JOINT RESOLUTION 263

At the request of Mr. SARBANES, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from Montana [Mr. BURNS] were added as cosponsors of Senate Joint Resolution 263, a joint resolution to designate May 4, 1992, through May 10, 1992, as "Public Service Recognition Week."

SENATE JOINT RESOLUTION 277

At the request of Mr. D'AMATO, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of Senate Joint Resolution 277, a joint resolution to designate May 13, 1992, as "Irish Brigade Day."

SENATE JOINT RESOLUTION 282

At the request of Mr. BOREN, the names of the Senator from New York [Mr. D'AMATO] and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 282, a joint resolution to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

SENATE CONCURRENT RESOLUTION 17

At the request of Mr. HATCH, the names of the Senator from Wisconsin [Mr. KOHL], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Colorado [Mr. BROWN] and the Senator from Indiana [Mr. COATS] were added as cosponsors of Senate Concurrent Resolution 17, a concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration.

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the names of the Senator from Louisiana [Mr. BREAUX], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KERRY], the Senator from Vermont [Mr. LEAHY], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Delaware [Mr. BIDEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. SYMMS] and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 95

At the request of Mr. DURENBERGER, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of Senate Concurrent Resolution 95, a concurrent resolution concerning the United States Trade Representative's review of previously rejected Generalized System of Preferences [GSP] petitions from Central and Eastern European Countries, and the denial of certain petitions for which no review was initiated in the 1990 review.

SENATE RESOLUTION 215

At the request of Mr. COATS, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Resolution 215, a resolution to amend the Standing Rules of the Senate to require that any pay increase for Members be considered as freestanding legislation and held at the desk for at least 7 calendar days prior to consideration by the Senate.

SENATE RESOLUTION 277

At the request of Mr. LAUTENBERG, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Resolution 277, a resolution expressing the sense of the Senate regarding loan guarantees for refugee resettlement in Israel.

SENATE CONCURRENT RESOLUTION 105—SUPPORTING THE PRESENTATION OF THE ELLIS ISLAND MEDAL OF HONOR ON APRIL 26, 1992

Mr. SPECTER (for himself, Mr. THURMOND, Mr. D'AMATO, Mr. BURNS, and Mr. STEVENS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 105

Whereas the immigrant station at Ellis Island, New York, opened on January 1, 1892, and admitted 700 immigrants to the United States on its first day of operation;

Whereas January 1, 1992, marked the centennial of the opening of Ellis Island;

Whereas approximately 17,000,000 immigrants were admitted through Ellis Island between 1892 and 1954;

Whereas approximately 40 percent of all people in the United States today can trace their heritage to immigrant ancestors who were admitted through Ellis Island;

Whereas the presentation of the Ellis Island Medal of Honor on April 26, 1992, by the National Ethnic Coalition of Organizations, in association with the Statue of Liberty-Ellis Island Foundation, will be a symbolic way to commemorate the centennial of the opening of Ellis Island;

Whereas the Ellis Island Medal of Honor will be presented to distinguished citizens who have promoted the bond between their native countries and their adoptive country and who exemplify a lifetime dedicated to the growth and strength of the United States while preserving the values and tenets of their heritage;

Whereas the Ellis Island Medal of Honor will also be awarded to individuals for distinguished service to humanity in all fields, professions, and occupations; and

Whereas the United States House of Representatives has passed a resolution designating January 1, 1992, as National Ellis Island Day: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress supports the presentation of the Ellis Island Medal of Honor on April 26, 1992, to initiate in a most worthy manner the centennial celebration of the opening of Ellis Island.

Mr. SPECTER. Mr. President, today I am submitting a concurrent resolution expressing support for awarding the Ellis Island Medal of Honor on Sunday, April 26, 1992. My colleague in the House of Representatives, FRANK GUARINI, introduced House Joint Resolution 130, designating January 1, 1992, as "National Ellis Island Day."

The Statue of Liberty-Ellis Island Foundation and the National Ethnic Coalition of Organizations will award the Ellis Island Medal of Honor to a group of notable American citizens, who typify the ideal of a life dedicated to the American way, while maintaining the values of their particular heritage. The awards ceremony will take place on April 26, 1992, in the Grand Hall at Ellis Island.

On opening day, January 1, 1892, 700 immigrants entered the United States through Ellis Island, and from 1892 to 1954 17 million immigrants were admitted through this historic passageway. The Ellis administration and staff, on the average processed up to 5,000 people a day. It is estimated that 100 million Americans can trace their ancestry to the immigrants that came through Ellis Island before traveling and setting throughout the country. Again,

the room at Ellis Island will be filled with hundreds of thousands of visitors.

During this time of mass immigration, the newcomers had little to no knowledge of English and hardly any money. Many arrived with only the clothes on their backs. Essentially, they risked their lives in exchange for freedom and a better way of life.

President Reagan asked Lee Iacocca to undertake a private sector venture and restore the Statue of Liberty and Ellis Island. In 1984, the restoration and preservation of Ellis Island and the Statue of Liberty began. It was the largest refurbishment project in the United States. On September 10, 1990, the Ellis Island Immigration Museum opened, marking the completion of the restoration. One of the features of the Immigrant Museum is the American Immigrant Wall of Honor. This exhibit is devoted to a display of names from a number of national origins. At the opening last fall, 2,000 names were inscribed on the Wall of Honor.

Mr. President, I come to this issue with a point of view, you might even say a substantial bias, because my parents were both immigrants. My father came to this country in 1911 at the age of 18 from Russia, and my mother came to this country at the age of 5 from a section of Russo-Poland. America is a land of immigrants who have enriched our country with their dedication, hard work, and traditions. I urge my colleagues to review and cosponsor this concurrent resolution, for I am sure they will concur that it is appropriate to honor those individuals who have made special contributions to build this great Nation.

SENATE RESOLUTION 280—RELATIVE TO THE TROPICAL RAIN FORESTS OF MALAYSIA

Mr. GORE (for himself, Mr. CRANSTON, and Mr. PELL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 280

Whereas the tropical rain forests of the East Malaysian State of Sarawak, some of the most biologically and culturally diverse rain forests, are being logged at the fastest rate in the world;

Whereas despite the recommendation of the International Tropical Timber Organization that this logging rate be significantly reduced to ensure long-term sustainability, the rate has instead risen dramatically;

Whereas this rate of logging will lead to the disappearance of virtually all primary tropical rain forests in Sarawak within a decade;

Whereas the effects of this logging on the indigenous peoples of Sarawak are causing hunger and suffering, and will lead to the destruction of their traditional cultures if it is not stopped immediately;

Whereas many of these populations face severe discrimination, denial of human rights, loss of cultural and religious freedoms, and in the worst case, cultural or physical destruction;

Whereas one of the most severely impacted tribal groups in Sarawak is the Penan, the last intact nomadic hunting and gathering culture in Southeast Asia;

Whereas commercial logging backed by foreign capital is the driving force behind deforestation in Sarawak;

Whereas most of the logging concessions in Sarawak are distributed in a politically motivated and arbitrary manner, without regard to the socioecological consequences;

Whereas most of the timber logged in Sarawak is exported in raw form to Japan and other Asian countries for secondary processing, concentrating wealth from the exports in the hands of a few individuals, and providing no additional income or employment for the people of Sarawak; and

Whereas it is incumbent upon the world community to create an environment favorable to the survival of the rain forests and the cultures dependent upon them: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) it should be the policy of the United States to call upon the Government of Malaysia to act immediately in defense of the environment of Sarawak by ending the uncontrolled exploitation of the rain forests of Sarawak, by reducing the annual rate of timber cutting by at least two-thirds, and by formally recognizing and upholding the customary land rights and the internationally established human rights of all indigenous peoples of such Government; and

(2) it should be the policy of the United States to call upon the Government of Japan to investigate the activities of certain private companies of Japan in contributing to the destruction of the Sarawak rain forest, and therefore to the destruction of the culture of the indigenous people of Sarawak.

• Mr. GORE. Mr. President, I rise today to submit a resolution on behalf of myself and Senators CRANSTON and PELL calling attention to a profoundly important struggle that is going on in the East Malaysian State of Sarawak. It is a struggle being waged by the Penan Indians, the indigenous tribal people of Sarawak, who have lived self-sufficiently within the rain forests there for tens of thousands of years. They are engaged today in a struggle for their very survival. But it is a profoundly symbolic struggle, as well—for it represents the struggles being waged all around the world to preserve the Earth's environment for generations to come.

The Penan Indians are desperately trying to save their homes and their culture from the incessant onslaught of bulldozers and chainsaws of timber companies. These companies have a ravenous appetite for the hardwoods that make up the forests in which the Penan live. They have been working so fast that they have logged in heavy rains, and in some cases have even used floodlights to conduct logging operations 24 hours a day.

The impact of this logging on the natives and their land is catastrophic, causing a depletion of the resources on which the Penan depend, including wild game, fish, and clean water. In many cases, logging companies have shown tremendous disrepect to these people by bulldozing land used as sacred burial sites.

For the last several months, hundreds of Penan have peacefully protested the continued deforestation. Gathering on the logging roads, they have tried their best to hold off the loggers. The Malaysian Government is now acting aggressively to stop their opposition. Recently, the leaders of the Penan have been jarred and their call for help is being silenced as the government has barred journalists from the area.

Mr. President, the rain forests of Sarawak are among the world's oldest and richest forest ecosystems. The forests are being cut down so fast, however, that if current rates are maintained, the entire region will be deforested within 8 years. Some of the estimated 2,500 species of trees have already been logged to extinction.

Sadly, the struggle of the Penan is not an isolated event. All around the world, cultures that have developed and thrived over the millenia are being destroyed by timber, mining, and commercial agricultural interests. Their loss is a tragedy to us all, and I believe that we must speak out against the human rights and environmental abuses they endure.

The resolution I submit today calls upon the Government of Malaysia to preserve the tropical rain forests and the indigenous tribal culture of Sarawak. It calls upon the Government of Japan to investigate the activities of certain companies that are contributing to the destruction of the Sarawak rain forest and, therefore, to the destruction of the culture of the Penan.

It is also being submitted in coordination with a nationwide media campaign to call attention to the plight of the Penan. I commend the bravey of the Penan people in protecting the natural treasure of the rain forests of Sarawak. They truly have placed themselves on the front lines of the war against nature.•

SENATE RESOLUTION 281—RELATIVE TO FOREIGN GOVERNMENT TRADE SUBSIDIES

Mr. DANFORTH (for himself and Mr. BAUCUS) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 281

Resolved, That it is the sense of the Senate that the United States Government should not, as a matter of official policy, condone or legitimize trade distorting subsidies, including development subsidies, by foreign governments that cause material injury to industries in the United States.

• Mr. DANFORTH. Mr. President, today I am introducing a sense of the Senate resolution regarding foreign government subsidies. Congressman GEPHARDT has introduced an identical resolution in the House of Representatives.

The resolution is very straightforward. It says simply that the U.S. Government should not, as a matter of official policy, condone or legitimize trade distorting subsidies that injure U.S. industries. The reason for making this obvious point is that the administration seems prepared to accept an international trade agreement with the European Community that does just that: It condones the huge subsidies provided by four European governments to Airbus Industrie.

Under article I, section 8, of the Constitution, the Congress is given the authority to regulate commerce with foreign nations. For practical reasons, Congress has delegated the power to negotiate trade agreements to the executive branch. However, Congress has retained the power to make fundamental policy decisions on trade.

In 1979, the Congress, acting under its constitutional authority, passed legislation implementing the GATT Subsidies Code. In doing so, Congress ratified the general policy contained in the Subsidies Code: That countries should not be permitted to subsidize their industries in a manner that causes injury to the domestic industry of another country. Our countervailing duty law was amended by the Congress to be consistent with that fundamental policy.

The EC also signed the Subsidies Code and agreed to abide by that policy. However, since that time the EC has ignored its obligations under the Subsidies Code and has heavily subsidized Airbus—to the serious detriment of the U.S. industry. According to the Commerce Department, Airbus has received $26 billion in subsidies since 1970. These subsidies have allowed Airbus to sell below normal commercial costs and thereby undercut U.S. aircraft manufacturers.

These subsidies have clearly caused injury to the U.S. aerospace industry. During the 1980's, Airbus went from about a 15-percent world market share to a 30-percent share. At the same time McDonnell Douglas went from about 30 percent to less than 15 percent market share.

As a result of this increasingly serious situation, the U.S. Government began negotiations with the EC over Airbus some 6 years ago. Yesterday, an agreement was announced. To my dismay, however, this agreement ratifies the Airbus subsidy scheme, rather than ending it. For instance, the agreement does not require Airbus to repay the $26 billion in subsidies already paid or committed. Nor does it restrict subsidies for Airbus planes currently under development, like the A330 and A340, which are Airbus' answers to the Boeing 747 and the MD-11.

In fact, under the agreement the EC would be expressly permitted to subsidize one-third of the development cost of new aircraft. Since the cost of developing a new aircraft is about $5 billion, this would allow a subsidy at the level of $1.65 billion.

This ratification of Government subsidies is a major change in U.S. policy. In my view, it is inconsistent with the policy set forth in the Subsidies Code approved by Congress in 1979. Such a fundamental policy change deserves congressional review and approval. I urge the administration to not accept this agreement until Congress can vote on it.

Mr. President, because Congressman GEPHARDT and I are both from Missouri and have McDonnell Douglas as a major constituent, some might think that our action on this issue is on McDonnell Douglas' behalf. This is not the case. The chairman of McDonnell Douglas has told me personally that he supports the agreement reached with the EC. As sometimes happens, McDonnell Douglas and I disagree on this issue.●

AMENDENTS SUBMITTED

NATIONAL INSTITUTES OF HEALTH REVITALIZATION AMENDMENTS

KENNEDY AMENDMENT NO. 1753

Mr. KENNEDY proposed an amendment to the bill (H.R. 2507) to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health, and for other purposes, as follows:

On page 26, line 20, after the period add the following new sentence: "Of the amounts appropriated under this section for any fiscal year, not less than 25 percent of such amount shall be made available for institutions that meet the requirements of section 499E(d)(2)(B)(25)(II)(aa)."

At the appropriate place in title I, insert the following new sections:

SEC. ___. PROSTATE CANCER RESEARCH.

(a) FINDINGS.—Congress finds that—

(1) one in every 11 men will develop prostate cancer;

(2) it is estimated that 34,000 deaths will occur in 1992 from prostate cancer, the second leading cause of cancer deaths in men;

(3) an estimated 132,000 new cases of prostate cancer will occur in 1992;

(4) current Federal research efforts in prostate cancer totaled $28,000,000 in fiscal year 1992;

(5) additional research concerning prostate cancer is urgently needed; and

(6) there is a need to accelerate the investigation into the cause, treatment and prevention of prostate cancer.

(b) EXPANDED RESEARCH.—Subpart 1 of part C of title IV (42 U.S.C. 285 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 417. EXPANDED PROSTATE CANCER RESEARCH.

"(a) IN GENERAL.—The Secretary shall undertake to expand and intensify prostate cancer research efforts through appropriate activities, including—

"(1) the conduct of basic research concerning the etiology and causes of prostate cancer;

"(2) the conduct of clinical research and related activities into the causes, prevention, detection and treatment of prostate cancer;

"(3) the implementation of prevention and control and early detection programs with respect to prostate cancer in accordance with section 412, particularly as it relates to intensifying research on the role of PSA for the screening and early detection of prostate cancer;

"(4) the implementation of information and education programs with respect to prostate cancer in accordance with section 413;

"(5) the implementation of research and demonstration programs with respect to prostate cancer in accordance with section 414, including the development and operation of prostate cancer research centers to bring together basic and clinical, biomedical and behavioral scientists to conduct basic and clinical, epidemiologic, psychosocial, prevention and treatment research and related activities; and

"(6) the establishment of an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of cancer research efforts.

"(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, in addition to the amounts authorized be appropriated for the National Cancer Institute under section 301 and 408, there are authorized to be appropriated $72,000,000 for fiscal year 1993, and such sums as are necessary for each of the fiscal years 1994 through 1997.".

SEC. ___. PROSTATE CANCER PREVENTION.

(a) FINDINGS.—Congress finds that—

(1) prostate cancer is the second most common cause of death from cancer among men;

(2) early detection can prevent death from prostate cancer;

(3) routine digital examination is one method for detecting potentially malignant prostatic nodules, and should be performed annually on all men over 40 years of age;

(4) advances in the early detection of prostate cancer, such as tests for prostate-specific antigens in the blood and non-invasive imaging techniques, may prove to be cost-effective screening techniques;

(5) education is needed to improve the application of proven cancer screening techniques; and

(6) increased efforts are needed to ensure that cost-effective methods for early prostate cancer detection are made available to men at risk.

(b) MORTALITY PREVENTION.—Part B of title III is amended by inserting after section 317A (42 U.S.C. 247b-1) the following new section:

"SEC. 317B. PROSTATE CANCER MORTALITY PREVENTION.

"(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, may award grants to States and local health departments for the purpose of enabling such States and departments to carrying out programs to—

"(1) screen men for prostate cancer as a preventive health measure;

"(2) provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

"(3) develop and disseminate public information and education programs for the detection and control of prostate cancer;

"(4) improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of prostate cancer;

"(5) establish mechanisms through which the States can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

"(6) evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program monitoring activities.

"(b) GRANT APPLICATIONS.—

"(1) REQUIREMENT.—No grant may be awarded under subsection (a), unless an application for such grant has been submitted to, and approved by, the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary shall prescribe, and shall include—

"(A) a complete description of the program which is to be provided by or through the applicant;

"(B) assurances satisfactory to the Secretary that the program to be provided under the grant will include education programs designed to communicate to men, and local health officials the significance of the early detection of prostate cancer;

"(C) assurances satisfactory to the Secretary that the applicant will report, on a quarterly basis, the number of men screened for prostate cancer and the number of men who were found to have prostate cancer, the number and type of medical referral made with respect to such men, the outcome of such referrals, and other information to measure program effectiveness as required under paragraph (2);

"(D) assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require; and

"(E) such other information as the Secretary may prescribe.

"(2) TECHNICAL ASSISTANCE.—The Secretary may prove training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to this section.

"(c) MAINTENANCE OF EFFORT.—No grant may be awarded under subsection (a) unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made, and will in no event supplant such State, local, and other non-Federal funds.

"(d) METHOD AND AMOUNT OF PAYMENT.—The Secretary shall determine the amount of a grant made under subsection (a). Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

"(e) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary, at the request of a recipient of a grant under subsection (a), may reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee; when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which any such grant is so reduced. Such amount shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

"(f) RECORDS.—Each recipient of a grant under subsection (a) shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(g) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a), that are pertinent to such grant.

"(h) INDIAN TRIBES.—For purposes of this section, the term 'units of local government' includes Indian tribes.

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section not more than $20,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) SET-ASIDE FOR TECHNICAL ASSISTANCE.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out activities under this section at the national level.".

On page 41 of the committee amendment, strike out lines 11 through 14 and insert the following:

"(c) CRIMINAL PENALTIES FOR VIOLATIONS.—

"(1) IN GENERAL.—A person who violates subsection (a) or (b) shall be fined in accordance with title 18, United Stats Code, and imprisoned for not more than 10 years.

"(2) PENALTIES APPLICABLE TO PERSONS RECEIVING CONSIDERATION.—A person who receives valuable consideration in connection with an offense under subsection (a) or (b) shall, notwithstanding section 3571 (c) and (d) of title 18, United States Code, be fined not less than twice the amount of the valuable consideration received.

On page 41 of the committee amendment, after line 25, insert the following new section:

SEC. 205. ESTABLISHMENT OF REGISTRY AND BANK AND STUDY.

Part G of title IV, as amended by sections 203 and 204, is further amended by inserting after section 498B the following new section:

"SEC. 498C. ESTABLISHMENT OF REGISTRY AND BANK.

"(a) IN GENERAL.—The Secretary shall establish a human fetal tissue registry and bank for the purposes of collecting and storing human fetal tissue obtained subsequent to a spontaneous or induced abortion, ectopic pregnancies or subsequent to a stillbirth.

"(b) STUDY CONCERNING THE PRESERVATION OF FETAL CELLS AND TISSUE.—The Secretary shall conduct a study to assess the various methods available for the optimal preservation of viable human fetal cells and tissue, including an assessment of—

"(1) the transportation and storage conditions involved;

"(2) the intervals between the collection of such cells and tissues and the cryopreservation or utilization of such; and

"(3) the methods and conditions for maintaining the optimal viability and functional integrity of both frozen and unfrozen cells and tissues.

"(c) CONSTRUCTION.—Nothing in this section shall be construed as authorizing or requiring a delay in the provision or continuation of funding for research concerning human fetal tissue transplantation.".

On page 42 of the committee amendment, line 1, strike out "205" and insert in lieu thereof "206.

On page 44 of the committee amendment, line 3, strike out "206" and insert in lieu thereof "207.

Strike out title IX, and insert in lieu thereof the following new title:

TITLE IX—REVITALIZATION OF INTRAMURAL RESEARCH PROGRAM

Subtitle A—Authorities of the Director

SEC. 901. MANAGEMENT OF THE INTRAMURAL PROGRAM.

Section 402(b) (42 U.S.C. 282(b)) is amended—

(1) in paragraph (10), by striking out "and" at the end thereof;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10), the following new paragraph:

"(11) exercise supervision, through the directors of the national research institutes, over the intramural research program of the National Institutes of Health; and".

Subtitle B—Personnel

SEC. 911. PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER.

Part A of title IV (42 U.S.C. 281 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 404. PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER.

"(a) STUDY OF PERSONNEL SYSTEM.—Not later than 1 year after the date of enactment of this section, the Secretary, acting through the Director of NIH, shall conduct a study to review the retention, recruitment, vacancy and turnover rates of support staff, including firefighters, law enforcement, procurement officers, technicians, nurses and clerical employees, to ensure that the National Institutes of Health is adequately supporting the conduct of efficient, effective and high quality research for the American public. The Director of NIH shall work in conjunction with appropriate employee organizations and representatives in developing such a study.

"(b) SUBMISSION TO CONGRESS.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and

submit to the appropriate committees of Congress a report containing the study conducted under subsection (a) together with the recommendations of the Secretary concerning the enactment of legislation to implement the results of such study.".

Subtitle C—Warren Grant Magnuson Clinical Center

SEC. 921. RENOVATION AND REPLACEMENT PROGRAM.

Title IV (42 U.S.C. 281 et seq.) (as amended by section 106) is further amended by adding at the end thereof the following new part:

"PART J—RESTORATION AND RENOVATION OF FACILITIES AND INFRASTRUCTURE

"Subpart 1—Warren Grant Magnuson Clinical Center

"SEC. 499N. WARREN GRANT MAGNUSON CLINICAL CENTER RENOVATION AND REPLACEMENT PROGRAM.

"(a) ESTABLISHMENT.—To address the problems existing at the Warren Grant Magnuson Clinical Center (hereafter referred to as the 'Clinical Center'), the Director of NIH may establish and implement a program for the renovation of the existing Clinical Center facility or the construction of a replacement facility. The Director may conduct feasibility studies to determine the appropriate action to be taken concerning the Clinical Center.

"(b) TRANSFER OF LAND.—

"(1) IN GENERAL.—The Secretary, acting through the Director of NIH, is authorized to accept the transfer to the National Institutes of Health of not less than 25 acres of land from other Federal agencies. Such land shall be suitable for the construction of a new research hospital and clinical center. Such land may include land obtained from the Secretary of the Navy, located on the reservation of the National Naval Medical Center, in Bethesda, Maryland.

"(2) USE AGREEMENT AND MEMORANDUM OF UNDERSTANDING.—The Secretary, acting through the Director of NIH, may enter into a Use Agreement and a Memorandum of Understanding with the Administrators, Director, or Secretaries of the appropriate executive branch entity, to accomplish the transfer of property pursuant to paragraph 1.

"(c) REQUIREMENTS.—

"(1) FACILITIES.—Any facility renovated or constructed under this section shall be equipped with a state-of-the-art capacity for beds and necessary laboratories and be comparable to the current Clinical Center complex, with necessary amenities for employees, volunteers, research subjects and visitors, including cafeteria and vehicle parking facilities.

"(2) TRANSFER OF PERSONNEL.—If a new facility is to be constructed under this section, the Secretary may expend amounts necessary to transfer the personnel and administration of the current Clinical Center to the new facility upon its completion.

"(3) COMPLETION.—Notwithstanding any other provisions of law, the renovation or construction performed under this section shall be completed as soon as feasible.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section. Such funds shall be available beginning October 1, 1992, and shall remain available until expended.".

Subtitle D—Acquisition of Land and Facilities

SEC. 931. ACQUISITION OF LAND AND FACILITIES.

Part I of title IV, as added by section 921, is amended by adding at the end thereof the following new subpart:

"Subpart 2—Acquisition of Land and Facilities

"SEC. 499O. PHYSICAL INFRASTRUCTURE FOR RESEARCH.

"(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Director of NIH, may establish and implement a comprehensive program that is designed to provide for the replacement or refurbishment of less than adequate buildings, utility equipment and distribution systems (including the resources that provide electrical and other utilities, chilled water, air handling, and other services that the Secretary, acting through the Director, deems necessary), roads, walkways, parking areas, and grounds that underpin the laboratory and clinical facilities of the National Institutes of Health. Such program may provide for the undertaking of new projects that are consistent with the objectives of this section, such as encircling the National Institute of Health Federal enclave with an adequate chilled water conduit.

"(b) REQUIREMENTS.—

"(1) DESIGN OF PROGRAM.—In establishing the program under subsection (a), the Secretary shall ensure that such program is designed to modernize the existing research and clinical laboratory infrastructure of the National Institutes of Health in the shortest possible time consistent with good stewardship of Federal funds.

"(2) FUTURE EXPANSION.—In designing the program under subsection (a), the Secretary may make reasonable allowance for future expansion and usual employee amenities, such as cafeteria services and vehicle parking.

"(3) NONDISRUPTION OF OPERATIONS.—In carrying out the program established under subsection (a), the Director of NIH shall, to the extent feasible, plan renovations and construction in such a manner that significant elements of the research program at the Institutes are not significantly disrupted.

"SEC. 499P. ACQUISITION OF LAND.

"(a) IN GENERAL.—The Director of NIH may purchase not to exceed a total of 300 acres of land for the establishment of a satellite campus in Maryland for the purpose of enhancing the intramural research capacity of the National Institutes of Health.

"(b) STUDY.—Prior to the purchase of land under subsection (a), the Director of NIH shall conduct a study concerning the expansion needs of the National Institutes of Health and the purpose for which the land is to be purchased. A report concerning such study shall be submitted for approval to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the Committee on Labor and Human Resources of the Senate, and to the other appropriate committees of Congress.

"SEC. 499Q. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out this subpart. Amounts appropriated under this subsection shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which such amounts are appropriated.".

Subtitle E—Procurement

SEC. 941. STUDY.

The Director of the National Institutes of Health and the Administrator of the General Services Administration shall jointly conduct a study to develop a streamlined procurement system for the National Institutes of Health that complies with the requirements of Federal Law.

Subtitle F—General Provisions

SEC. 951. FINDINGS.

Congress finds that participation of women in the National Institute of Health research enterprise and its undertakings is essential to the continued growth of the intramural program and, to this end, efforts should be directed, to the extent practicable, to provide accommodations such as child care so that more women, particularly at the child-rearing stage, can participate as scientists in the intramural research program and as subjects in research programs conducted at the research hospital and clinical center of the National Institutes of Health.

SEC. 952. DAY CARE.

Part G of title IV is amended by inserting after section 496 (42 U.S.C. 289e) the following new section:

"SEC. 496A. DAY CARE.

"(a) ESTABLISHMENT OF DAY CARE PROGRAM.—The Director of NIH may establish a program to provide day care service for the employees of the National Institutes of Health similar to those services provided by other Federal agencies.

"(b) SLIDING SCALE.—Any day care provider at the National Institutes of Health may establish a sliding scale that takes into consideration the income and needs of the employee.

"(c) OTHER SERVICES.—The Director of NIH may provide for the availability of day care service on a 24-hour-a-day basis if the Director considers such appropriate to meet the needs of employees. In order to accommodate these needs, the Director is further authorized to enter into a rental or lease purchase agreement as needed.".

At the appropriate place in title X, insert the following new sections:

SEC. _____. CHILDREN'S VACCINE INITIATIVE.

Part G of title IV is amended by inserting after section 494 (42 U.S.C. 289c) the following new section:

"SEC. 494A. CHILDREN'S VACCINE INITIATIVE.

"(a) AUTHORITY.—The Secretary, in collaboration with the National Vaccine Program under title XXI, shall conduct vaccine research and development to contribute to the global Children's Vaccine Initiative envisioned by world leaders at the World Summit on Children.

"(b) DEVELOPMENT OF NEW VACCINES.—In carrying out subsection (a), the Secretary, through the National Institute for Allergy and Infectious Diseases, the National Institute for Child Health and Human Development, the National Institute for Aging, and other public and private programs, shall carry out activities to develop affordable new and improved vaccines to be used in the United States and in the developing world that will increase the efficacy and efficiency of the prevention of infectious diseases. The goal of the activities conducted under this section is to develop and make available vaccines that require fewer contacts to deliver, that can be given early in life, that provide long lasting protection, that obviate refrigeration, needles and syringes, and that protect against a larger number of diseases.

"(c) REPORT.—The Secretary shall include in the report required under section 2104, information with respect to activities and the progress made in implementing the provisions and achieving the goals of this section.

"(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized

to be appropriated for activities of the type described in this section, there are authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $30,000,000 for fiscal year 1996.".

SEC. _____. WORKERS' FAMILY PROTECTION

(a) SHORT TITLE.—This section may be cited as the "Workers' Family Protection Act".

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons;

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) PURPOSE.—It is the purpose of this section to—

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) EVALUATION OF EMPLOYEE TRANSPORTED CONTAMINANT RELEASES.

(1) STUDY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies (such as the National Institutes of Health) as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.

(B) MATTERS TO BE EVALUATED.—In conducting the study and evaluation under subparagraph (A), the Director shall—

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by—

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including—

(I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

(II) the health effects, if any, of the resulting exposure on workers and their families;

(III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers' homes and personal clothing;

(IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

(iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

(v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

(vi) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) DEVELOPMENT OF INVESTIGATIVE STRATEGY.—

(A) TASK FORCE.—Not later than 12 months after the date of enactment of this Act, the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall—

(i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the number of individuals appointed to represent industry and workers shall be equal in number;

(ii) review the report submitted under paragraph (1)(B)(v);

(iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

(iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) INVESTIGATIVE STRATEGY.—

(i) CONTENT.—The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data.

(ii) PEER REVIEW.—The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars for the purpose of obtaining comments concerning the proposed strategy.

(iii) FINAL STRATEGY.—After the peer review and public comment is conducted under clause (ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) CONSTRUCTION.—Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) IMPLEMENTATION OF INVESTIGATIVE STRATEGY.—Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than 4 years after that date of enactment of this Act, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) and on other information available to the Secretary, shall—

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed to protect workers and their families from employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the results of such determination.

(2) ADDITIONAL REGULATIONS OR STANDARDS.—If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section.

SEC. . ANNUAL REPORT CONCERNING THE LEADING CAUSES OF DEATH.

(a) REPORT.—The Secretary of Health and Human Services shall, not later than August 31, 1992, and not later than March 31 of each year thereafter, prepare a report that lists—

(1) the 20 illnesses that are the leading causes of death in the United States and the number of deaths from each such cause, the age-specific and age-adjusted death rates for each such cause, the death rate per 100,000 population for each such cause, the percentage of change in cause specific death rates for each age group, and the percentage of total deaths for each such cause;

(2) the amount of money that the Department of Health and Human Services spent on research, prevention, and education with respect to each of the 20 illnesses described in paragraph (1) for the most recent year for which the actual expenditures are known;

(3) the amount of money the Secretary estimates that the Department of Health and Human Services will spend on research, prevention, and education with respect to each of the 20 illnesses described in paragraph (1) for the year for which the report is prepared; and

(4) with respect to the years specified in paragraphs (2) and (3), the percentage of the

total of the annual expenditures for research, prevention, and education on the 20 illnesses described in paragraph (1) that are attributable to each illness.

(b) SUBMISSION TO CONGRESS.—The Secretary of Health and Human Services shall submit the report required under subsection (a), together with relevant budget information, to the chairman and ranking minority member of the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

At the appropriate place, insert the following new title:

TITLE —NATIONAL PROGRAM OF CANCER REGISTRIES

SEC. 01. SHORT TITLE.

This title may be cited as the "Cancer Registries Amendment Act".

SEC. 02. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry;

(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information; and

(6) nine States and localities participate in the Surveillance, Epidemiology, and End Results Program administered by the Director of the National Cancer Institute, a highly successful national cancer registry program that should be maintained and enhanced in accordance with its original intent.

(b) PURPOSE.—It is the purpose of this Act to establish a national program of cancer registries.

SEC. 03. ESTABLISHMENT OF A NATIONAL PROGRAM OF CANCER REGISTRIES.

Title III (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

"SEC. 399B. NATIONAL PROGRAM OF CANCER REGISTRIES.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Institute involved, may make grants to States, or may make grants or enter into contracts with academic or non-profit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer with the exception of basal cell and squamous cell carcinoma of the skin, data concerning—

"(1) demographic information about each case of cancer;

"(2) information on industry and occupation for each case of cancer, to the extent such information is available from the same record;

"(3) administrative information, including date of diagnosis and source of information;

"(4) pathological data characterizing the cancer, including the cancer site, stage of disease (Staging Guide), incidence, and type of treatment; and

"(5) other elements determined appropriate by the Secretary.

"(b) MATCHING FUNDS.—

"(1) IN GENERAL.—The Secretary may make a grant under subsection (a) only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION; MAINTENANCE OF EFFORT.—

"(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(B) With respect to a State in which the purpose described in subsection (a) is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the average amount of such contributions made by the State toward the collection of data on cancer for the 2-year period preceding the first fiscal year for which a grant under subsection (a) is made with respect to the State. State contributions towards cancer control prevention services made during fiscal year 1992 shall be included in satisfying the State matching requirement for the initial fiscal year during which this section is in effect.

"(c) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—No grant shall be made by the Secretary under subsection (a) unless an application therefore has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 491 and 492.

"(2) ASSURANCES.—Each applicant, prior to receiving Federal funds under subsection (a), shall provide assurances satisfactory to the Secretary that the applicant will—

"(A) provide for the establishment of a statewide population-based cancer registry by the State health department, or by one or more academic health centers, nonprofit cancer research and prevention organizations, or medical societies acting in collaboration with the State health department;

"(B) comply with appropriate standards of completeness, timeliness, and quality or population-based cancer registry data;

"(C) provide for the annual publication of reports of cancer data under subsection (a); and

"(D) provide for the authorization under State law of the statewide cancer registry, including—

"(i) a means to assure complete reporting of cancer cases (as described in subsection (a)) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients;

"(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a)) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

"(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing screening, diagnostic or therapeutic services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

"(iv) the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

"(v) the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other States cancer registries and local and State health officers;

"(vi) the promulgation of regulations under which confidential case data may be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

"(vii) the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

"(viii) protection for individuals complying with the law, specifically that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

"(d) RELATIONSHIP TO CERTAIN PROGRAMS.—

"(1) IN GENERAL.—This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

"(2) SUPPLANTING OF ACTIVITIES.—In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2) (C) and (D) and are appropriately coordinated with the existing SEER program.

"(3) TRANSFER OF RESPONSIBILITY.—The Secretary may not transfer administration responsibility for such SEER program from such Director.

"(4) COORDINATION.—To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under part M with existing Federally supported cancer registry programs.

"(e) REQUIREMENT REGARDING CERTAIN STUDY ON BREAST CANCER.—In the case of a grant under subsection (a) to any State specified in section 399D(a)(2), the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.

"SEC. 399C. PLANNING GRANTS REGARDING REGISTRIES.

"(a) IN GENERAL.—

"(1) STATES.—The Secretary, acting through the Director of the Institute involved, may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).

"(2) OTHER ENTITIES.—For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

"(b) APPLICATION.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 399D. STUDY IN CERTAIN STATES TO DETERMINE THE FACTORS CONTRIBUTING TO THE ELEVATED BREAST CANCER MORTALITY RATES.

"(a) FINDING.—

"(1) IN GENERAL.—Congress finds that the Director of the National Cancer Institute has determined that the rates of mortality for breast cancer in the States specified in paragraph (2) are elevated compared to rates in other States.

"(2) RELEVANT STATES.—The States referred to in paragraph (1) are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

"(b) STUDY TO DETERMINE THE FACTORS CONTRIBUTING TO ELEVATED MORTALITY RATES.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary, acting through the Director of the Institute involved, shall conduct a study for the purpose of determining factors contributing to the determination described in subsection (a) with respect to the States.

"(2) COOPERATION OF STATE.—The Secretary may conduct a study required in paragraph (1) in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 399B(a).

"(3) PLANNING, COMMENCEMENT, AND DURATION.—The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in paragraph (1). The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

"(4) REPORT.—Not later than September 30, 1999, the Secretary shall complete the study required in paragraph (1) and submit to the appropriate committees of Congress the findings and recommendations made as a result of the study.

"(5) DEFINITION.—As used in this subsection, the term 'relevant State' means a State specified in subsection (a)(2).

"SEC. 399E. TECHNICAL ASSISTANCE IN OPERATIONS OF STATEWIDE CANCER REGISTRIES.

"The Secretary, acting through the Director of the Institute involved, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

"SEC. 399F. AUTHORIZATION OF APPROPRIATIONS.

"(a) REGISTRIES.—For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for each of fiscal years 1993 through 1999. Out of any amounts appropriated for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 399C, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection 399E.

"(b) BREAST CANCER STUDY.—From amounts appropriated for the National Cancer Institute under sections 301 and 408, the Secretary shall expend not less than $1,000,000 for each fiscal year to carry out section 399D.".

KENNEDY AMENDMENT NO. 1754

Mr. KENNEDY proposed an amendment to the bill H.R. 2507, supra, as follows:

At the appropriate place insert the following:

SEC. . REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of sections 491 and 492 of the Public Health Service Act.

SIMON AMENDMENT NO. 1755

Mr. SIMON proposed an amendment to amendment No. 1754 proposed by Mr. KENNEDY to the bill H.R. 2507, surpa, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of sections 491 and 492 of the Public Health Service Act; and

(2) the Secretary, in accordance with the provisions of Title II of this Act, will make a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

SIMON AMENDMENT NO. 1756

Mr. SIMON proposed an amendment to the bill, H.R. 2507, supra, as follows:

At the appropriate place, insert the following new section:

SEC. —. REQUIREMENTS REGARDING SURVEYS OF SEXUAL BEHAVIOR.

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, such survey may not be carried out unless—

(1) the proposal for such survey has undergone review in accordance with the applicable requirements of sections 491 and 492 of the Public Health Service Act; and

(2) the Secretary, in accordance with the provisions of Title II of this Act, will make a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

HELMS AMENDMENT NO. 1757

Mr. HELMS proposed an amendment to the bill, H.R. 2507, supra, as follows:

On page 115, strike lines 1 through 17 and insert the following:

"SEC. 1010. PROHIBITION AGAINST SHARP ADULT SEX SURVEY AND THE AMERICAN TEENAGE SEX SURVEY.

"The Secretary of Health and Human Services may not, during fiscal year 1992 or any subsequent fiscal year, conduct or support the SHARP survey of adult sexual behavior or the American Teenage Study of adolescent sexual behavior. This section becomes effective April 15, 1992.".

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that hearings have been scheduled before the Committee on Energy and Natural Resources.

A hearing will take place on Wednesday, May 6, 1992, at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets, NE, Washington, DC. The purpose of the hearing is to receive testimony on the science concerning global climate change.

A second hearing has been scheduled for Tuesday, May 12, 1992, at 9 a.m. in room SD-366 of the Dirksen Senate Office Building, to receive testimony concerning energy policy implications of global climate change and international agreements regarding carbon dioxide emissions.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC. 20510, Attention: Leslie Black Cordes.

For the further information, please contact Leslie Black Cordes of the committee staff at 202/224-9607.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate, Thursday, April 2, 1992, at 10 a.m. to conduct a hearing on availability of credit and real estate values.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Thursday, April 2, 1992, at 9:30 a.m., for a hearing on the subject: IRS tax systems modernization.

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

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, April 2, 1992, at 10:30 a.m. to hold a hearing on the nomination of George J. Terwilliger, III, to be Deputy Attorney General.

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

SUBCOMMITTEE ON CONSUMERS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Consumers Subcommittee, of the Committee on Commerce, Science and Transportation, be authorized to meet during the session of the Senate on April 2, 1992, at 9:30 a.m. on S. 664, Alcohol Beverage Advertising Act.

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

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, April 2, at 2:30 p.m. to hold a hearing on Hong Kong's reversion to China and implications for United States policy.

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

ADDITIONAL STATEMENTS

OVERCOME HOLIDAY CELEBRATION

• Mr. SARBANES. Mr. President, I rise today to pay tribute to the Baltimore Times' third annual "Overcome Holiday Celebration." This important celebration is sponsored by Father Peter Bramble and the members and community of St. Katherine's Church in Baltimore, MD. The Overcome Holiday is celebrated in honor of African-Americans, their proud heritage, and ongoing contributions to this city and to our Nation.

I join with pride in this special tribute as the Overcome Celebration honors the dedication and personal sacrifice of the Reverend Dr. Martin Luther King, Jr., to the principles of justice and equality in America and I am most proud to once again honor the life-long struggle of Nelson Mandela to overcome the abhorrent apartheid system in South Africa. We must remember these men as great leaders, each in his own country, who, because of their courage and bravery, should serve as inspiration to all Americans. Both men dedicated their lives to achieving equal treatment and enfranchisement for all people. Each moved their own Nation in a lasting way and inspired thousands to follow their examples.

St. James Episcopal Church is hosting the Overcome Program and Feast on Saturday, April 4, 1992 and I want to commend the community for actively promoting workshops and other events during the remainder of the month of April. African-Americans have overcome many obstacles in the history of this Nation with great pride and success. As we honor them in celebration, we must assure young people that the doors of opportunity will remain open and that they must continue to seek to fulfill their potential—for this Nation's greatest strengths are drawn from the individual contributions of every man and woman.•

MORMON CHURCH RELIEF SOCIETY

• Mr. CRAIG. Mr. President, this March as every March, we celebrated one very well-known holiday that brings together individuals of like mind to remember a long and productive heritage, that is of course, Saint Patrick's Day.

I would like to call to the attention of my colleagues another significant event being celebrated this month. It is the sesquicentennial of the organization of the Relief Society of the Church of Jesus Christ of Latter-Day Saints, if you will, the women's organization of the Mormon Church.

This organization of women was established with 20 members on March 17, 1842, in the then, frontier town of Nauvoo, IL. One hundred fifty years later, there are 3 million members in communities large and small in over 100 nations.

This voluntary organization, with a motto of "Charity Never Faileth," is dedicated to works of charity, education, and training of women.

Its first president, Emma Smith, gave the members a charge that has served the organization successfully for its 150 year history: "Each member should be ambitious to do good."

Through the years, unnumbered acts of charity have been performed by individual members of the Relief Society; food put on barren tables, nurturing in hours of illness, wounds bound, pains relieved by loving hands, quiet reassuring words in times of death. More than 19,000 units of the Relief Society worldwide are also giving organized daily service to others.

Mr. President, I understand that over the years, many specific projects have been undertaken by the Relief Society. For example, in the late 1800's Relief Society women gathered wheat for a day of possible need. In 1918, that wheat was made available to the Government of the United States and used to alleviate food shortages in Europe resulting from World War I.

It is not peculiar, but certainly commendable, that this organization, after 150 years of service to others in 100's of individual and collective projects both large and small, has chosen "Celebrate through Service" as their sesquicentennial theme.

One important dimension that the organization has emphasized throughout the years is education. It is my understanding that the celebration of the sesquicentennial will be celebrated by initiating a great new project. The project program will be to teach those who suffer from functional illiteracy. This will be undertaken in the small units worldwide and tailored to the needs and capacity of individual communities and units.

At a time when we are all searching for ways to more effectively and efficiently use the sometimes limited resources at our disposal, the quiet performance this organization has provided can be an example for all of us. The Relief Society is certainly to be congratulated for its long and productive past and its goals for the future.

I would like to join Gordon B. Hinckley, first counselor in the first presidency of the Mormon Church in stating:

May the spirit of love which has motivated its members for a century and a half continue to grow and be felt over the world. May their works of charity touch for good the lives of uncounted numbers wherever they find expression.•

TRIBUTE TO LUANNE NYBERG

• Mr. DURENBERGER. Mr. President, today, I rise to recognize and commend a champion for children.

My friend, Luanne Nyberg, challenges all of us to remember that if we expect children to succeed in life, or have a fighting chance in school, we must take a look at the total environment outside the classroom and the school grounds. Against all the odds in today's broken and troubled world, children continue to maintain a positive attitude and have hopes and dreams for their future. Adequate health care, nutrition, and supervision are important investments for the welfare of children and will help guarantee their bright future.

Luanne is a true visionary and advocate for children. As the director of the Children's Defense Fund in St. Paul, MN, she brings to life the issues and realities of children and parents, particularly those who may be poor, minority, or disabled. Many of her stories tell of self-employed or single families for whom earnings must pay for food, clothing, shelter, gas, childcare, and other emergencies, leaving little money to pay for health insurance. These families live on the edge hoping they do not have to go the doctor. They suffer because they cannot afford to pay the high costs of medical care and medication, or they must wheel and deal to get some sort of health care for their uninsured children.

She certainly has helped me think about expanding preventive and primary care health services for moms and kids. In June 1988, Luanne provided testimony at a national infant mortality hearing, and in 1989 she participated in the first field hearing of the U.S. Bipartisan Commission on Comprehensive Health Care Hearing. Most recently, she participated in the 1992 North Star Health Forum: National Challenges, Minnesota Solutions.

Last spring, Minnesota, a publication of the University of Minnesota Alumni Association, featured Luanne as an outstanding individual and alumnae. I would like to share with you their recognition of the work she has done in Minnesota:

* * * Luanne has led the fight for adequate health and nutrition programs to serve uninsured mothers and children, and has championed welfare reform, state funding for child support and programs to teach mothers how to raise healthy children. The Children's Health Plan, which Luanne is credited with getting passed by the state legislature, is one of the most forward-looking plans ever designed to provide, health, nutrition, and education programs for mothers and children. The plan, which now serves more than 20,000 Minnesota children from birth to age 18, is considered a national model of excellence and has already been copied in Colorado and New York.

There is no better, wiser, or more significant investment than the one that we make in our children. In our busy world, Luanne is committed to not allow children to be forgotten. She reminds and urges us always to ensure that all children have the best possible start in life and good health care throughout childhood so that more costly expenses, due to neglect, can be avoided.

Since 1986, Luanne has led the Children's Defense Fund. Previously, she was program director of the Urban Coalition of Minneapolis, State director of the Minnesota Recipients Alliance and the first-ever client advocate for the Hennepin County Welfare Department. In addition, Luanne founded the Children's Coalition, Food First Coalition, Child Care WORKS Coalition, and the JOBS NOW Coalition.

American clergyman Phillips Brooks once said, "He who helps a child helps humanity with an immediateness which no other help in any other stage of human life can possibly be given again." Thank you, Luanne, for your dedication, expertise, and care. As you have always given to future generations, I wish the best for you, and your family, Ingrid and Willie.•

A TRIBUTE TO THE GREATER HAZELTON CHAMBER OF COMMERCE

• Mr. WOFFORD. Mr. President, it is my pleasure to recognize and commend The Greater Hazelton Chamber of Commerce as they begin their 1992 centennial celebration. This organization began as the Hazelton Board of Trade in 1892. Its stated purpose was to promote the city's well-being by assistance and development to the commercial, industrial, and business community. The Board of Trade eventually changed its name to the Greater Hazelton Chamber of Commerce to reflect the inclusion of the many surrounding communities.

Repeatedly over the years, the chamber has successfully responded to regional industry changes. They formed an accomplished industrial development group known as CAN DO which has attracted new jobs to Hazelton. During the 1960's, the chamber literally opened new roads by working to locate the intersection of the new Interstates 80 and 81 in the region. Furthermore, they were instrumental in establishing the area's most prominent tourist attraction, Eckley Miners Village.

The Greater Hazelton Chamber of Commerce has been responsible for the formation of other like-minded civic organizations including Leadership Hazelton, Junior Leadership, and the Arts Council of Greater Hazelton. In fact, Hazelton was the All-American City of 1964 and received an honorable mention citation for All-American City in 1970.

The Greater Hazelton Chamber was officially accredited by the U.S. Chamber of Commerce in 1971 and recognized by the President's Commission on Private Sector Initiatives in 1988. The Greater Hazelton Chamber of Commerce today serves over 520 members representing a population of approximately 75,000 people.

This is a 100-year story of progress and development facilitated by the hard work and testimony of the Greater Hazelton Chamber of Commerce officials. I applaud the achievements of their efforts, extend my fullest support, and look forward to the continued prosperity of Greater Hazelton and its chamber of commerce.•

REDESIGNING UNITED STATES-CHINA RELATIONS

• Mr. INOUYE. Mr. President, I wish to share with my colleagues the inaugural address of the Clarence T.C. Ching lecture series on Asian affairs delivered by Dr. Harry Harding of the Brookings Institution entitled "Redesigning United States-China Relations" which was presented on March 12 at the East-West Center in Honolulu. At a time when the United States relations with China are undergoing change and are in conflict over matters of human rights, trade, and weapons proliferation, this lecture is most timely. It will serve to increase our knowledge of China and help us in our efforts to formulate the policies that are necessary and appropriate to live and work with the world's most populous nation. I ask unanimous consent to have it printed in the CONGRESSIONAL RECORD.

The material follows:

REDESIGNING UNITED STATES-CHINA RELATIONS

(By Dr. Harry Harding)

It is always a pleasure to visit the beautiful State of Hawaii, and to see so many friends from the East-West Center, the University of Hawaii, and other organizations in Honolulu. It is a particular honor to be invited to give the inaugural address in the Clarence T.C. Ching Lecture Series on Asian affairs.

Ever since the Tiananmen Crisis of June 1989, U.S. policy toward China has been in tatters. Public opinion on our China policy is divided: roughly half of the public seems to support a stable relationship with Peking, while the other half favors placing more pressure on China in pursuit of American interests. Congress and the White House remain at loggerheads. The Congress has been attempting ever since 1990 to impose conditions on China's most-favored-nation trading status, or else to withdraw it completely. The Bush administration has been able to veto this legislation so far, but it has not

been able to restore a consensus with Congress over our China policy.

This deadlock reflects an underlying problem in our relationship with China: the conceptual frameworks that have guided the relationship since the rapprochement of the early 1970's have now proven obsolete, and no new framework has been devised to take their place. What is needed, above all, is a new design for U.S.-China relations—a design that can provide coherence to policy, that can mobilize domestic support, and that is suited to the complex realities of today's China.

What might such a conceptual framework be? I want to organize my remarks this afternoon around the major alternatives. Three of these represent the frameworks that have guided the relationship in the past; two are concepts that have emerged in the post-Tiananmen era. I will conclude that the most promising design is to seek what I will call a "normal" relationship with China—a relationship that recognizes that we have many interests at stake in our relationship with Peking, that understands that our two countries share both common and divergent perspective on all of those interests, and that applies to China the same standards and policies that we apply to other countries. I will not be able to discuss every issue in our relationship with China tonight, but hope simply to suggest that this is the most promising conceptual framework for addressing them.

1. A STRATEGIC ALIGNMENT

Historically, the first conceptual framework to guide U.S.-China relations after the rapprochement of the early 1970's was the idea of a strategic alignment or united front between Washington and Peking, based on common opposition to the threat of an expansionist Soviet Union. That united front, embodied in the Shanghai Communique of February 1972, was forged at a time when both China and the United States were relatively weak, and the Soviet Union appeared relatively strong. China was enmeshed in its turbulent Cultural Revolution; the United States was ensnared in the war in Vietnam; and the Soviet Union under Leonid Brezhnev was rapidly expanding its conventional and nuclear power. In this context, ending the mutual isolation of China and the United States, and forging a strategic alignment between the two countries, would obviously promote the security of both Peking and Washington.

This conceptual framework made several things possible in the 1970's and early 1980's. First, it permitted both the China and the United States to redirect some of their military assets to deal with the Soviet threat, rather than to prepare for a confrontation with each other. Second, it allowed the two countries to engage in limited forms of military cooperation, including sharing intelligence on the Soviet Union, and coordinating policies on Cambodia and Afghanistan. Third, and perhaps most important, the notion of a strategic alignment between China and the United States allowed the two countries to manage their differences over Taiwan, and to overlook the vast discrepancies between their ideologies and political and social systems.

By the mid-1980's however, this conceptual framework had become the victim of its own success. Mikhail Gorbachev had come to the conclusion that the Soviet Union could not sustain a policy of military buildup and strategic advance, especially if it meant continued confrontation with both China and the United States. In essence, Gorbachev's "new thinking" in foreign policy involved a reduction of tensions with both Peking and Washington. His summit meetings, first with Ronald Reagan and then with Deng Xiaoping, marked the end of both the cold war and the Sino-Soviet split. But these welcome developments also obviated the need for a Sino-American alignment against the Soviet Union, and thus greatly weakened the strategic rationale for the U.S.-China relationship. The collapse of the Soviet Union in 1991 merely placed the last nail in the coffin of the united front against the Kremlin.

Some analysts in China appear to hope that this kind of strategic relationship with the United States could be resurrected, largely as a way of managing the differences between the two countries over trade and human rights. Even the Bush administration, in the first months after the Tiananmen Crisis of 1989, also seemed interested in preserving some kind of alignment with China.

It is not clear, however, who would serve as the common enemy to motivate such a relationship. For the foreseeable future, Russia will be preoccupied with its own internal affairs, and is unlikely to resume an adventurist or expansionist foreign policy. Even if it were to do so, perhaps under more conservative leadership, it seems unlikely that Moscow would be willing to take on both China and the United States simultaneously. Thus, a renewed Sino-American alignment against Russian adventurism appears implausible.

Some observers have raised the possibility of a Sino-American alignment against Japan, but this too, is an unlikely development. To be sure, there are growing tensions between Tokyo and Washington over our commercial relationship. But the Japanese-American rivalry is likely to remain economic rather than strategic; and China is unlikely to want to forswear access to Japanese capital, technology, and markets. It is therefore implausible that Japan would evoke an alignment between China and the United States that in any way resembles their united front against the Soviet Union in the 1970's.

In short, the strategic alignment between Peking and Washington is dead, and is unlikely to be reconstituted in the foreseeable future. If we are looking for a conceptual framework for our relationship with China, we must therefore look elsewhere.

2. AN ECONOMIC PARTNERSHIP

Even as the strategic alignment between the two countries began to fade in the mid-1980's, analysts and policy makers in Peking and Washington were quickly able to find a new conceptual framework to take its place. With China now committed to economic modernization, and interested in commercial and scientific links with the outside world, it seemed that bilateral economic and cultural ties between China and the United States would now lie at the heart of their relationship. In 1984, Richard Nixon was one of the first Americans to articulate this new conceptual framework when he pointed out, on the eve of President Reagan's visit to China, that strategic interests might have brought the two countries together in the 1970's, but that economic interests would keep them together in the 1980's. It was widely believed that, as the world's largest developed country and the world's largest developing country, the United States and China were naturally complementary economies. Moreover, many Chinese and American analysts believed that a relationship rooted in common economic and cultural interests would be more stable and more mature than a marriage of convenience directed against a third country.

And, indeed, this new conceptual framework did promote a rapid expansion of commercial and cultural ties between the two countries—an expansion that has continued to the present day. Bilateral trade grew from $1 billion in 1978 to $20 billion in 1990. American foreign investment in China—actual investment, not merely contracted investment—increased from zero to nearly $2 billion over the same period. The flow of Chinese students and scholars to the United States rose from a handful in 1978 to more than 13,000 per year, reaching a cumulative total of around one hundred thousand. In the other direction, the flow of American tourists to China increased from a trickle in the late 1970's to around 230,000 in 1990, for a cumulative total of more than two million.

The qualitative changes in Sino-American relations have also been dramatic. American investors in China are now manufacturing goods for both the Chinese and American markets, and are doing so in wholly owned subsidiaries as well as in joint ventures. American and Chinese scholars are engaged in various kinds of collaborative research. American popular culture has made its mark on urban China, with rock music popular on Chinese radio and with American soap operas and adventure shows among the most avidly watched on Chinese television. These developments, in turn, have increased the numbers of Chinese and Americans with a direct stake in a stable Sino-American relationship.

But interdependence has produced conflict as well as collaboration. The terms of trade and investment have been controversial from the beginning of the 1980s. Peking has complained about American import quotas, especially in textiles, about restrictions on the export of advanced American technology, and about Washington's failure to inaugurate a bilateral economic assistance program for China. The United States has criticized the inadequacies in China's investment climate, and the existence of various trade policies that promote exports while restricting imports. More recently, too, American observers have criticized signs that Chinese firms are exporting products manufactured by prison labor, or with false certificates of origin.

The tensions in the Sino-American commercial relationship, which were evident throughout the 1980's, have become more serious in the past several years, as China's trade surplus with the United States has grown. At $12-13 billion in 1991, America's deficit with China is now second only to that with Japan. And, as China's economy continues to grow, as its foreign trade sector continues to reform, and as Hong Kong and Taiwanese manufacturers continue to relocate their manufacturing operations to China to take advantage of lower labor costs, the trade imbalance is likely to widen even further.

As a result, the idea of a mutually beneficial economic partnership no longer provides a compelling conceptual framework for Sino-American relations. To be sure, China remains a large potential market, from which the United States would not want to be excluded. And both American exporters, consumers, and investors continue to benefit from commercial ties with China. But the details and terms of those relations are likely to remain contentious, particularly as neo-mercantilism in China encounters growing protectionism in the United States.

3. IDEOLOGICAL CONVERSION?

Even as these disputes over terms of trade begin to complicate Sino-American relations

in the mid-1980's, the United States began to develop a third conceptual framework for its relationship with China—perhaps the most emotionally powerful of all. China's program of economic and political reform, which had at first seemed piecemeal and cautious, now appeared more comprehensive, systematic, and radical. China's urban reforms promised to transform a centrally planned economy into a regulated market economy, and to leaven state industry with substantial private, collective, and foreign ownership. The creation of special economic zones, economical and technological development zones, and other open areas along the coast greatly increased the opportunities for foreign trade and investment. Political reform also entered the Chinese agenda, in part as Chinese elites accepted the need to cast aside outmoded doctrines and create a more rational bureaucratic apparatus, but also as younger Chinese intellectuals began to press for more freedom and greater pluralism. It seemed clear that China was, by the late 1980's, embarked on a program of political and economic liberalization unprecedented in the Communist world. Assisting this historic transformation could therefore be regarded as the conceptual basis for American policy toward China.

This new and more radical wave of reform in China gave further impetus to the quantitative and qualitative expansion of economic and cultural ties that we outlined a few minutes ago. But its more significant contribution was to solidify the political base for Sino-American relations in the United States. By 1989, fully 72 percent of Americans surveyed reported that they had favorable impressions of China, whereas only 13 percent—an all-time low—said that they had unfavorable images of the country. Indeed, conservative opinion leaders who had once been skeptical about the U.S.-China relationship now became among its most enthusiastic supporters, since they had become persuaded that China had become the first Communist country to reject Marxism in favor of capitalism and democracy.

This new enthusiasm for China tapped deep and longstanding wellsprings of goodwill and emotion in the United States. Even since they had first come into contact with China in the 19th century, many Americans had held the hope that, somehow, China could be remade in the American image. In the late 19th and early 20th century, that image had been a highly religious one, with the goal being the conversion of Chinese to Christianity. Now, in the late 20th century, the image has had a more secular flavor, with the objective being China's transformation into a democratic, market-oriented society. In either case, American hopes were encouraged by their contacts with earnest young Chinese intellectuals who, dissatisfied with their country's level of economic and political development, were looking abroad for attractive and comprehensive solutions to their country's problems, and found much of appeal in the United States.

At first, the popular demonstrations that swept Tiananmen Square in the spring of 1989 seemed to reinforce this new framework for Sino-American relations. The protests provided more evidence that urban Chinese were demanding political reform. The invocation of Thomas Jefferson and Patrick Henry, and the construction in Shanghai of a small replica of the Statue of Liberty, convinced many Americans that young Chinese were indeed looking to the United States for inspiration and support. And at first it appeared that the protests were irrepressible, and thus that political liberalization was irreversible.

This conceptual framework was, of course, shattered by the massacre in Peking in the predawn hours of June 4, by the subsequent wave of political repression and economic retrenchment that swept across the country in the following months, and by developments elsewhere in the Communist world. While other Communist countries seemed finally to be embarking on political and economic liberalization, Peking appeared to have thrown its reform program into reverse. From the vanguard of change in the Communist world, China seemed to have moved to the rear, along with other recalcitrant and reactionary regimes such as Cuba and North Korea. The proportion of Americans holding favorable impressions of China fell, in 1989 alone, from nearly three-quarters to about one-third—from 72 percent to around 31 percent—just above the levels of the mid-1970's, when the Gang of Four still shaped much of Chinese domestic and foreign policy.

But this conceptual framework still retains its appeal to many Americans today. To them, the revival of political liberalization in China is only a matter of time, which will be brought about when the octogenarian architects of the Tiananmen Massacre pass from the scene and are replaced by younger and more open-minded leaders. In the post-Deng era, the two countries can resume a partnership which the United States remakes China in its own image.

Unfortunately this framework is an overly simplistic, and ultimately unrealistic, concept on which to base American policy. For one thing, the revival of reform is not the only conceivable scenario for post-Deng China. Political decay—featuring corruption, ethnic tensions, eroding central authority, and social unrest—remains a disturbing possibility. A reassertion of tighter administrative controls over both the economy and the political system is also conceivable, particularly if China cannot cope effectively with its economic, demographic, and environmental problems. Perhaps most likely is a continuation, in some form, of the present pattern, whereby successful economic performance is used to obviate the need for political liberalization. In short, although Americans can hope for the revival of political reform, they should not presume it will occur.

Moreover, even if political and economic reform do both revive, they may not mean the restoration of a harmonious Sino-American relationship. Reform may be a turbulent process, with periodic outbreaks of protest and repression that continue to complicate relations with the United States. The two countries may well have different perspectives on international economic, environmental, and security questions. Above all, a successfully reforming China may see its trade conflicts with the United States intensify, rather than recede.

4. A RETURN TO CONFRONTATION

Ever since the Tiananmen Massacre, some Americans have seemed willing to adopt yet another conceptual framework—a return to a confrontational relationship with China, at least until the revival of economic and political reform. In their view, China has become repressive at home and irresponsible abroad. In response to Peking's misconduct it would therefore be appropriate for the United States to end normal political and commercial contacts with Peking by, among other things, restricting high-level diplomatic contact and by terminating China's most-favored-nation status.

The bill of particulars against China is by now a familiar one. Since Tiananmen, the advocates of this position have argued, Chinese leaders have reimposed administrative controls over the economy so as to restrict the operation of collective and private enterprises. They have cut back on imports, and promoted exports through illegal means as prison labor and false labeling. They have vigorously suppressed independent religious organizations and labor unions, and have directed renewed repression against Chinese scholars, journalists, artists, and ethnic minorities. Abroad, China continues to export missiles and other conventional weapons to unstable regions such as the Middle East, and to provide diplomatic and material support to such unsavory political forces as the military junta in Burma and the Khmer Rouge in Cambodia. China's critics are prepared to link all these issues to Peking's most-favored-nation trading status, threatening to end normal commercial relations with China unless Peking's performance on all these issues significantly improves.

We should make no mistake about it: actually removing China's most-favored-nation status would be interpreted in Peking as the United States adopting a confrontational policy toward China. And adopting such a conceptual framework would be, in my opinion, both unwise and unwarranted.

It is unwise because it would be both costly and counterproductive. A confrontational policy toward China would greatly restrict our ability to reduce our military deployments in Asia, would throw our relations with other Asian countries into disarray, and would reduce the chances of cooperating with China on global economic, strategic, and environmental issues. Withdrawing China's most-favored-nation status would not only impose considerable hardship on American exporters and consumers, but would also encourage Peking to tighten administrative controls over the economy and impose restrictions on scholars and intellectuals with links to the United States. It would do measurable harm to the economic prosperity of both Taiwan and Hong Kong, each of which is becoming increasingly economically intertwined with the Chinese mainland. Moreover, it would also slow down the economic growth that is the long-term engine for political change in China.

Moreover, a confrontational posture toward China is not warranted by Peking's conduct either at home or abroad. To be sure, we find much objectionable in China's human rights record, foreign trade practices, and arms sales. But they only represent part of a much more complicated equation. Although political liberalization has halted, economic reform now appears to be moving forward, and even accelerating. Although the political environment is more repressive than it was just before the Tiananmen protests of 1989, the Chinese Communist Party has not been able to reestablish the totalitarian controls of the Maoist era, or to prevent independent thinking by Chinese intellectuals. Despite its disturbing record of arms sales abroad, Peking still seeks a peaceful environment in the Asia-Pacific region, and has played a constructive role in discouraging nuclear proliferation on the Korean peninsula and in reaching a comprehensive political settlement in Cambodia.

5. A NORMAL RELATIONSHIP

If none of these conceptual frameworks is appropriate, what then is the alternative? Let me propose a concept that will sound commonplace, but would in fact be unprecedented for Sino-American relations: a nor-

mal relationship with Peking, in which we regard China neither with admiration nor disdain, neither as ally nor adversary, neither as eager student nor ideological rival. Unlike all the alternatives, this would imply a balanced and dispassionate assessment of China, and a sophisticated and nuanced policy for dealing with it.

More specifically, a normal relationship with Peking would suggest that we view China in the following ways:

It would imply a realization that China is involved in a protracted and complex process of modernization and reform, in which frustrations are as likely as accomplishments. Like other large developing countries, China is grappling with the problems of corruption, legitimation, inflation, inequality, population pressures, and environmental damage. Like other Communist nations, China is coping with the legacy of decades of central planning, ideological dogmatism, and isolation from the West. And, like other Asian countries at comparable stages in their development, China is trying to combine a market-oriented economy with an authoritarian political system. As Americans, it is vital that we view China from a long-term comparative perspective, avoiding the temptation to become elated at progress or despondent over failure.

It would imply a realization that a wide range of American interests—strategic, commercial, academic, humanitarian, and environmental—are at stake in China. A unidimensional policy that focuses on one of these issues at the expense of the others is unwise and unsustainable.

It would imply a realization that, on virtually all these issues, the United States and China have both complementary and competitive interests. This makes it impossible to view China in simplistic terms as either "friend" or "foe."

And a normal relationship with Peking would imply a realization that China is neither central to American foreign policy, nor irrelevant to it. It is not the major threat to American strategic interests today, the principal potential ally of the United States, the most promising market for American exports, or the most likely convert to American values. But, conversely, we cannot and must not treat China with benign neglect. It is a major factor in both the economic interactions and the strategic balance in the Asia-Pacific region. Peking also has global reach, as a permanent member of the Security Council, as a major polluter, and as a large arms exporter. On most international issues, China can either make things either considerably worse or marginally better.

In short, the U.S.-China relationship should be less hostile than it was in the 1950's and 1960's, and less effusive than it was in the 1970's and 1980's. The exaggerated rhetoric of the past—describing China as a radical revolutionary state bent on world domination, portraying Peking as an honorary member of NATO, or hailing China as the first Communist country to renounce Marx and embrace capitalism—needs to be replaced by more balanced and less emotional portraits.

Adopting the conceptual framework would also have some significant implications for American policy toward China. Without going into details, let me briefly indicate some of the highlights.

First, the main thrust of American policy can be viewed as persuading Peking to join and abide by the international regimes accepted by most other nations, such as the GATT, the Nuclear Non-Proliferation Treaty, the Missile Technology Control Regime, and the major multilateral human rights conventions. China should also be encouraged to participate constructively in the creation of still other regimes, such as the Asia-Pacific Economic Cooperation process [APEC] and a system of cooperative security in Asia. Couching U.S. policy in these terms is more likely to gain international support and Chinese acceptance than if it is presented as unilateral and arbitrary American preferences.

Relatedly, the principal American strategy should be to use the same incentives and disincentives toward China that we would apply to other nations in similar circumstances. This would not involve threats to withdraw China's most-favored-nation-treatment—a trading status that we routinely give to virtually every other nation in the world—but would instead entail the use of more targeted and flexible measures. For example, we should link bilateral and multilateral financial assistance to China's human rights record, as well as using steady diplomatic pressure to criticize Peking's human rights abuses. We should use section 301 of the Trade Act to address unfair Chinese trade practices. And we should restrict technology transfer and military cooperation until Peking agrees to restrict the proliferation of conventional and nuclear weapons.

Treating China as a normal country, rather than as a pariah state, would also require constant engagement of Chinese and American officials at all levels. This implies lifting the ill-advised sanctions against cabinet-level contacts and military exchanges between the two governments. Tough-minded dialogue with Peking should be seen not as kowtowing to Chinese leaders, but as a crucial instrument for pursuing American interests.

6. AN EVALUATION OF PRESENT AMERICAN POLICY

Finally, let me share my assessment of where U.S. China policy stands today. For the first 18 months after the June 4 incident, the Bush administration's China policy seemed wedded to the strategic alignment and economic partnership of the past, without a full realization that these conceptual frameworks had lost their appropriateness abroad and their legitimacy at home. The administration's muted condemnation of the Tiananmen Massacre, its professions of continued friendship for China and for Deng Xiaoping, and its attempt to resolve the crisis in Sino-American relations by making continued conciliatory gestures to Peking in the hopes of reciprocation—all these reflected an effort to preserve and rebuild a relationship whose time had passed.

Conversely, much of congressional and editorial opinion seems wedded to a different set of concepts that are equally inappropriate. Some are willing to risk a confrontation with China, in the name of promoting human rights, fair trade, and nonproliferation. Others appear committed to a policy of benign neglect of Peking, waiting for the emergence of new leaders who will resume political liberalization.

Since early 1991, the Bush administration has gradually adopted a policy much in keeping with that recommended here, using a variety of diplomatic and economic incentives and disincentives to address the various issues in the relationship. Moreover, this strategy has begun to achieve some preliminary results. China has ratified the Nuclear Non-Proliferation Treaty, and agreed to abide by the Missile Technology Control Regime. It has reached an agreement with the United States on the protection of intellectual property rights, and has promised to ban the export of commodities produced by prison labor or carrying false certificates of origin. Even in the area of human rights, Peking has given a better accounting of those detained or arrested after Tiananmen, has released some dissidents from prison, and has allowed the families of dissidents in exile to join their relatives abroad. None of these steps has completely resolved the issues at stake, but they all represent moves in the right direction.

Unfortunately, this new policy has not yet rebuilt a domestic consensus on our relationship with China, largely because it has not been adequately explained to the American public. Few people, even in Washington, fully understand the components of American policy toward Peking. Even more important, the administration has not yet articulated the conceptual framework from which that policy springs. Until it does so, many Americans will understandably continue to believe that the White House is continuing its earlier policy of concession and restraint. This, in turn, will make it difficult to resolve the ongoing debate over China's most-favored-nation status or to gain the flexibility the White House needs to implement a nuanced policy effectively.

One might think that obtaining support for a normal relationship with China would be a rather easy task. In fact, it will be quite difficult. Americans have typically tended toward simplistic and emotional images of an extremely complex and often enigmatic country, and toward correspondingly unidimensional and exaggerated policies. Achieving normalcy in our relationship with China will therefore paradoxically require some wrenching adjustments in our customary ways of thinking. But such adjustments are essential if U.S.-China relations are to be put on a more stable and appropriate course.●

FOREIGN OPERATIONS CONTINUING RESOLUTION

● Mr. ADAMS. Mr. President, foreign assistance remains one of the most unpopular Federal programs. Whether in the Congress, the administration, or the Presidential campaigns, no one wants to incur the wrath of voters by supporting the foreign aid budget. The common wisdom is that Americans have turned inward and are totally unwilling to fund the programs that would help maintain our leadership in international affairs.

Yet, it is important to remember that there is much in the foreign aid account that the American people support. And there is much more that we in Congress and Government can and should do to increase that support and to improve public understanding of our foreign aid program.

For example, the majority of people in my State support United States assistance to the former Soviet Union. They support short-term food aid, technical assistance, and agricultural credits. They support swapping weapons for wheat. They support increased private involvement and official support to spur that involvement.

Military assistance to the Government of El Salvador has never been

popular in Washington State, but support for the people of El Salvador runs very, very deep. The desire to help Salvadorans solidify the democratic strides made in the recent peace accords translates into widespread support for shifting United States assistance from military aid to economic aid.

One out of every four jobs in Washington State depends on international trade. Several of the programs under the foreign assistance account help companies in my State and throughout the country compete overseas and expand into new markets.

The legislation that the Senate passed yesterday is vital to the continuation of our foreign assistance programs. Politics prevented the enactment of a regular appropriations bill for fiscal year 1992. I am pleased that they did not likewise prevent the Senate from carrying these important programs over until the next fiscal year.

Here are some of the programs whose funding we guaranteed yesterday: Peace Corps, Child Survival, U.N. peacekeeping missions, international population assistance, the Export-Import Bank, the Trade and Development Program, the Overseas Private Investment Corporation, and a host of bilateral and multilateral initiatives in health, education, environmental protection, and economic development.

In response to changing world conditions, there are several areas in the legislation that do not simply continue fiscal year 1991 levels or authorities. There is new authority for aiding the former Soviet Union, there is a transfer of military funding for El Salvador to a new demobilization account designed to support the peace accords, and there are increased levels of funding for our contribution to U.N. peacekeeping efforts and to IAEA monitoring and enforcement work in Iraq, and for certain humanitarian programs such as the Peace Corps and refugee assistance. I applaud these efforts.

The continuation of these programs is clearly in the U.S. national interest. A stable world order depends on a strong and viable international community, on broad-based economic growth, and on sustainable development that protects the world's resources.●

AIDS UPDATE

● Mr. CRANSTON. Mr. President, according to the Centers for Disease Control, as of February 21, 1992, 213,641 Americans have been diagnosed with AIDS; 136,473 Americans have died from AIDS; and 77,168 Americans are currently living with AIDS.

COLD FEET ON AIDS EDUCATION

The Centers for Disease Control has just unveiled a national education campaign about AIDS. Tragically, it tells us less about AIDS than it does about how far the Government will go to avoid discussing sex or drugs.

In this multimillion dollar effort, to be printed and broadcast through the country, Federal officials have ignored both what the public wants and what veteran AIDS educators know works. In a Roper poll last year, 90 percent of Americans surveyed said they needed to know more about how to use condoms; 80 percent thought that "pretty explicit sexual material" would be necessary to get teenagers to protect themselves against AIDS.

Yet in the national campaign announced last week the words "sex" and "condoms" are never used. There is not a shred of information in the ads about how to protect against AIDS. Instead, the public is invited to call 1-800-342-AIDS or to write to a post office box in Rockville, MD. A reporter for the Washington Post tried the 800 number 24 times, got 18 busy signals and was put on hold six times. Two members of my staff tried repeatedly this week to get through, with no success.

Mr. President, the CDC campaign would be laughable were it not so tragic. This year 40,000 more Americans will become infected with the virus that causes AIDS. Close to 100 percent of these Americans would not have been infected with the HIV if they had used condoms for sex or clean needles if they used drugs.

This simple message—condoms and clean needles—is the message that saves lives. For thousands of Americans who may become infected with the HIV because they did not get this message, the CDC's wrongheadedness may prove fatal.●

UNITED WAY OF BUFFALO AND ERIE COUNTY, 75TH ANNIVERSARY

● Mr. D'AMATO. Mr. President, it is with great pride that I rise today to pay tribute to the United Way of Buffalo and Erie County on the auspicious occasion of their 75th anniversary. This organization is monumentally successful at addressing health and human care needs through the efficient generation and distribution of resources.

A key element in any successful venture is the ability of diverse groups to come together and work toward a common goal. For the past 75 years, the United Way of Buffalo and Erie County has been doing just that, functioning as the catalyst in a communitywide effort to address health and human service needs by uniting corporations, government, organized labor, human service agencies, private citizens, and others.

In 1917, our country was faced with the violence and horrors of war. While help was needed for those overseas, the need was also great for helping organizations back home. It was from this need that the United Way of Buffalo and Erie County was born. Three local organizations, the Charity Organization Society, the Children's Aid Society and Society for the Prevention of Cruelty to Children, and the District Nursing Association all joined together in their fundraising efforts in order to more effectively meet the growing community needs.

The joint charities and community fund grew and developed over the years, steadily increasing the number of agencies involved and the amounts raised. The name changed throughout history, but the mission remained the same: United forces to increase the community's capacity to care for one another.

Today, the United Way exists as a family of 89 health and human service agencies that provide more than 300 service programs to the community, as well as a community problem solver that channels both money and other resources toward the most pressing needs currently facing western New York.

The agencies funded by today's United Way address a wide variety of issues, providing services from cradle to grave. Service areas include: Food and shelter, crisis intervention services, children's services, mental health counseling, services to the disabled, services to frail elders, employment training, and substance abuse prevention. In addition to funds allocated to member agencies, over 500 additional agencies receive funds and services through donor designations, grant programs, gifts-in-kind, emergency food and shelter, and management assistance services.

Every aspect of United Way activity involves a cooperative effort on the part of knowledgeable, dedicated community volunteers and the well-trained and highly qualified United Way staff. Over 3,000 local volunteers devote their time each year to fundraising, allocating funds, planning, marketing, service delivery, and other activities for the United Way and its member agencies. The strength of the organization lies in this volunteer structure, as it allows for the most cost efficient and effective use of donors' dollars. The result is that over 90 cents of every dollar raised in the United Way's annual fundraising campaign finds its way directly to community services. The less than 10 percent that goes toward administrative costs is among the lowest for any nonprofit organization in the country.

Over 2,000 individuals are involved in the intricate communitywide operation which has been helping to improve the lives of the citizens of Buffalo and Erie County for 75 years.

In keeping with its mission, the United Way has responded to the changing needs of the 1990's through various programs and initiatives. Areas such as literacy skills, elder care, and services to children have been targeted as sources of growing concern, and will re-

ceive increased attention and funding throughout this decade.

I ask my colleagues to join me in commending this desideratum of the Buffalo community. I congratulate the United Way of Buffalo and Erie County for their 75 years of service and expect that they will continue to make important contributions to their community for many years to come.•

FOREIGN OPERATIONS CONTINUING APPROPRIATIONS

• Mr. BAUCUS. Mr. President, I rise to discuss my opposition yesterday to House Joint Resolution 456, the foreign operations continuing appropriations for fiscal year 1992.

House Joint Resolution 456 reflects a foreign policy confined by the assumptions and goals of another era. The cold war is over. We have enormous problems within our borders. The United States needs policies that reflect the situation of 1992—not 1962.

International security today is in large part a matter of economic prowess. It is high time that we took a hard look at our foreign assistance program to insure that it promotes American economic interests.

Our current foreign economic assistance efforts are out of touch with the competitive world we face. Sixty-eight percent of our economic assistance is provided as cash giveaways to foreign governments. Moreover, only 35 cents of each U.S. aid dollar is spent for American products.

Other donor countries, such as Japan and Germany, require that large portions of their aid be used by recipient countries to purchase goods and services from the donor's industries. These practices have cost the United States between $2.4 and $4.8 billion annually in lost exports.

It is true that many foreign countries face dire circumstances. I wish the United States could help everyone everywhere. But the United States faces dire economic circumstances as well.

Just last week, the President sent Congress a list of domestic projects he intends to kill. That list includes three projects in Montana. The total cost of the foreign operations bill is $14.2 billion. By contrast, the three Montana projects cost a total of only $1.65 million.

Something is wrong with our priorities; we have so many urgent domestic problems—health care, unemployment, and education, just to name a few.

There are some foreign aid programs, such as agriculture credits, that benefit both U.S. producers and foreign recipients. There are other specific efforts, such as stabilizing the volatile situation in the former Soviet Union, that clearly promote America's security. There are even worthwhile projects, such as the Peace Corps, in the foreign operations bill.

Unfortunately, however, taken as a whole, this bill is a giveaway—a giveaway we can no longer afford.•

CABLE IN THE CLASSROOM

• Mr. SIMON. Mr. President, I rise today to recognize the cable industry for its unique contribution to our Nation's schools by matching cable's vast information resources with the needs of the schools. Not only is the cable industry working to provide useful, informative programming for teachers to use, but it is also committed to getting schools wired for cable at no cost to the schools.

The major cable companies and national cable programmers formed Cable in the Classroom in 1989. Cable in the Classroom is a nonprofit service whose members offer educational programming including news, documentaries, and dramatic presentations as additional tools for learning. Local cable companies work together with their schools to address equipment needs and encourage effective use of the provided programs.

It is my understanding that local cable companies will provide free cable installation to every junior and senior high school accessible to cable. These schools can then receive basic service and other additional educational programs at no cost. This is an extremely helpful contribution. As we are all too aware, our communities and school districts are struggling for funds to provide new and innovative classroom opportunities.

The cable industry provides teachers with curriculum-based support materials to assist them in using the programs in the classroom. One of these materials is the monthly Cable in the Classroom magazine which lists programs by academic subject area and includes articles written by teachers on how they have used the programs. The magazine covers a wide range of current issues and is a valuable tool to teachers using cable programs in their classrooms.

Teachers face a tremendous challenge in providing students with an expanded view of the world. Nearly 10 million students are now benefiting from the cable industry's commercial free educational programs. I commend the cable industry on its educational endeavor to assist teachers in motivating students to seek new horizons.•

THE BROWNS OF CHARLESTON: A FAMILY OF ACHIEVERS

• Mr. HOLLINGS. Mr. President, I rise to extend my warm congratulations to the Brown family of Charleston for being honored by the National Black Family Summit as Black Family of the Year for 1992. I have known Melvin and Juanita Brown for years, and I know how much their family means to them. I know the deep pride they feel in their Naval Academy graduate son, Ensign William Melvin Brown III, and their businesswoman daughter, Tamara Brown Boone, a Talladega College graduate like her mother.

Mr. President, the Browns are the typical, all-American family and, in that respect, perhaps they are increasingly atypical. They are extremely close knot. When the kids were growing up, there was always time for help with the homework, dinner together at home, and worship at St. Patrick's Catholic Church. And somehow, while raising two standout children, Juanita found time to continue her teaching career, and Melvin, Sr., succeeded in building one of the most successful black companies in America, the American Development Corp.

I have long had a theory that there is no particular magic or mystery to raising a good family. It is like growing tomatoes; there is a simple formula for success. That formula includes an abundance of love and respect, a strong sense of discipline and structure, plus an accent on values. It sounds so simple, and yet it seems like fewer and fewer parents are willing to invest the time and energy to make this time-honored formula work.

On that score, Mr. President, we owe a debt of gratitude to Melvin and Juanita Brown for setting a superb example of just how good and fulfilling a family can be. I salute their many achievements, and congratulate them on being named the 1992 Black Family of the Year.•

THE DANGERS OF PLAYING POLITICS WITH PEACE

• Mr. DASCHLE. Mr. President, those of us in this country, and in much of the world, find ourselves in the eye of the storm—maybe I should say several different storms of varying strengths and forms. As a result, we are sometimes disoriented, unsure of the direction the storm is taking, and all too often veering off from the course that will lead us to safety.

The storm in the Middle East has been in enduring one, and the effort to help bring calm to that region is one of the greatest challenges facing the United States. In that process, we must be careful not to lose sight of the fundamental facts of the situation or the fundamental goals of U.S. policy in the region.

Although the stormy nature of the last few months has been used by some to cloud the issue, we must not forget that Israel is our strongest ally, our most consistent friend in the Middle East. Israel's commitment to democracy is unmatched by any other country in the region.

The goals of our policy in the Middle East have been, and continue to be: protection of Israel's right to exist

within secure borders; region stability; protection of human rights; and peace and freedom for all people. Toward that end, the United States has an important role to play in the peace process, and I applaud the President for recognizing that fact.

However, the efforts of the administration and others to weaken Israel through unfair, surprise rhetorical attacks have been irresponsible. They belittle the longstanding and unparalleled United States-Israel relationship—and the friendship between the American and Israeli people—and they threaten the very process the administration claims to be advancing.

I am not suggesting that the administration should deny legitimate disagreements it may have with the Israeli Government. Just as United States administrations vary in style and substance, so do Israeli administrations. Even the best of friends have disagreements. But if the administration has disagreements with Israel, or any other strong ally, it should address them in a way that reflects and respects the friendship between the two countries. The White House and State Department leaks and hastily spoken words fly in the face of that principle.

Furthermore, the politicization by the President of the serious issues in the Middle East threatens to undermine not only the important United States-Israel relationship, but the prospects for peace and stability in this war-torn region. We simply cannot afford either of these consequences. The President may be winning quick political points with his gross misrepresentations and oversimplifications of complex issues, but what he risks losing for the country and for all the people of the Middle East is far more important.

Trust and friendship are relationships that develop over time. They cannot be rushed, and they should not be taken lightly once they have developed. We have such relationships with Israel. And, while I hope this will change someday, we simply cannot say that about any other country in the Middle East. We need to be honest about who our friends are and not give in to the efforts of some to distract us from those realities or from our fundamental policy goals.

Israel is a genuine and strong ally of the United States. The events of a year ago are a tragic reminder of the pain the Israeli people have endured for their friendship with the United States. We are in danger of eroding that relationship for what I believe are unfair and shortsighted reasons. Maybe we are caught in a storm and unable to see clearly. But we must right our course, or we, and the world, will suffer the consequences.●

AMERICAN HEALTH SECURITY PLAN FOR 1992

● Mr. PRYOR. Mr. President, I rise to commend my friend and distinguished colleague from South Dakota, Senator DASCHLE, for introducing the American Health Security Plan of 1992. He has tirelessly worked on this legislation for years now, and the bill he is introducing today makes a substantial and notable contribution to the health care reform debate.

There can be no doubt in anyone's mind that this Nation faces a health care crisis. Despite the fact that we are well on our way to spending $1 trillion a year on health care, over 35 million Americans have absolutely no basic insurance, tens of millions more live in fear of joining the ranks of the uninsured, and many millions more have no protection against the burdensome costs of long-term care and prescription drugs.

This year, Americans will spend $817 billion on health care. To put this into perspective, that means that we are spending an unbelievable $2.2 billion a day, $93.3 million each hour, $1.6 million each minute, and $26,000 each second.

Even more startling is the fact that, unless we stem the tide of out-of-control health care costs, health care expenditures will rise from $2,566 an American in 1990 to $5,712 by the turn of the century. In other words, in 8 short years, we will be spending $3,000 a person more a year than we are now spending.

By anyone's definition, these skyrocketing health care costs are unsustainable. They are the number one reason why we have such large numbers of uninsured and underinsured Americans. We all understand this, but Senator DASCHLE, WOFFORD, and SIMON are today introducing a proposal that attempts to directly confront this overwhelming problem.

Senator DASCHLE, however, did not develop his legislation on the back of a napkin. It was no knee-jerk reaction. He went out, talked to people all over the country, and learned about the problem. He knows how important it is to understand the problem you are attempting to solve before you actually address it.

During his examination of this issue, Senator DASCHLE learned many important facts. He developed a firsthand understanding of the very real financial burdens that health care costs are placing on businesses, and small business in particular. He learned that different parts of the country want to have the flexibility to design their own responses to the health care crisis they face. He found that our Nation has a warped sense of health care priorities that ignores the need for, and cost effectiveness of, preventive and primary care. He witnessed how prescription drug costs are out of control and saw the need for protection against these costs. The health care proposal he, Senator WOFFORD, and Senator SIMON are introducing today attempts to address these and the many other shortcomings of our health care system that Senator DASCHLE has immersed himself in over the many past months.

Just recently, I had the chance to discuss the proposal with Senator DASCHLE. I have yet to fully understand the legislation and have a number of outstanding questions. As a result, I am not ready to cosponsor the bill at this time. Having said this, I do believe the broad concepts he has incorporated into his bill merit serious attention and discussion. There is certainly no doubt that this legislation would change the course that our health care system is headed.

Having just come back from Arkansas, if there is one thing I know, it is that my constituents are ready for a change. Most of them do not believe our health care system can get much worse.

Mr. President, it is always much simpler to criticize proposals than to develop comprehensive initiatives to address our chronically ill health care system. While I have not yet decided whether the American health security plan is the option my constituents and I are desperately seeking, we owe a debt of gratitude to Senators DASCHLE, WOFFORD, and SIMON for offering something new and bold for us to consider. I look forward to working with my colleagues, and their excellent staff, in this challenging but essential undertaking.●

GROWING ROLE FOR THE SIKHS

● Mr. BINGAMAN. Mr. President, I ask that the following article, "Growing Role for the Sikhs", by Glenn Hunter be submitted into the RECORD.

The article follows:

[From the Santa Fe Report, Feb. 11, 1992]

GROWING ROLE FOR THE SIKHS

(By Glenn Hunter)

Tuesday, Jan. 21, turned out to be a long day for Siri Singh Sahib Yogi Bhajan, the leader of the American Sikh community and a part-time resident of Española. The tall, 62-year-old holy man, a one-time government official and military officer in his native India, devoted much of that day to politicking, Santa-Fe style.

Hours after rising to pray at 4 a.m., Yogi Bhajan (pronounced BUD-jen) attended the opening session of the 1992 New Mexico Legislature at the state Capitol, where he delivered the invocation and listened to Gov. Bruce King's State of the State address from a coveted seat in the downstairs gallery. Later, the yogi moved on to a fund-raising celebration for the state Democratic Party at La Fonda.

The yogi was scheduled to give the benediction at the close of the so-called Hall of Fame banquet, an annual affair attended this year by some 600 of the party's movers and shakers. But, fueled by filet mignon, rolled tacos and the spirited music of David

Salazar—not to mention other sorts of spirits as well—the celebration, by some accounts, got a little out of hand.

First, a cake intended for Governor King was wheeled out prematurely, well before it could be properly announced. When the evening's keynote speaker strode to the podium, the crowd began shouting instead for a version of the Democrats' traditional, Depression-era campaign song, "Happy Days Are Here Again." They soon discovered that few in the hall could carry the tune, however, and the victory anthem was abandoned. By the time the yogi gave the closing prayer, many of the party faithful had already left.

"I admire the yogi stamina. He stayed until 10 p.m.," says Ray Powell, the chairman of the state Democratic Party. "By that time, so much had already happened."

When it comes to long hours spent on behalf of the party, Democrats throughout the state are realizing they have fewer more reliable, hard-working allies than Yogi Bhajan and his community of New Mexico Sikhs. Mainly American-born followers of a 500-year-old Indian religion blending the Hindu and Muslim faiths, Sikh devotes in the Land of Enchantment have lived since 1971 in a 30-acre ashram, or community, in Sombrillo, just southeast of Española.

There, some 200 men, women and children live their lives by principles such as devotion to a single God, vegetarianism and abstinence from alcohol and drugs. They also adhere to credos including a militant defense of the downtrodden, the importance of chastity for personal fulfillment and the spiritual and psychological value of hard work.

Over the years, the members of the community have founded some 20 businesses in New Mexico—including at least five based in Santa Fe—and injected themselves vigorously into political affairs, especially within the Democratic Party. And as the state's majority party gears up for the 1992 election campaign, the Sikhs' involvement seems to be growing.

According to Daya Singh Khalsa, a member of the Democratic Party Finance Council, the Sikhs' political involvement in New Mexico originated with Yogi Bhajan himself, who first came to the state in the late '60s to teach the principles of Sikhism to young people Khalsa says the yogi spoke out strongly against drug use and the disintegrating family, stressing the value of "meditation, education and different kinds of psychological therapies" in confronting such trends. That message won a number of youthful converts—many of them middle-class Anglo hippies seeing a more structured lifestyle—as well as the ear of Bruce King, who was running for his first term as governor.

"We were campaigning in northern New Mexico when somebody said, 'Let's stop by at the Sikhs—they seem to be Democrats, and we'll see if we can elicit their help,'" King remembers. "So we stopped and there was a group of 60 or 70 of them, and they looked very temporary to me—barely hanging in with tents and other types of temporary facilities. I thought, 'Well, it'll be a wonder if they even stay around long enough to vote on election day, but we better visit with 'em anyway.'

"The yogi was there and he said, 'Well, I've been working more with the Democrats, and we were thinking about helping you,'" the governor continues. "Then they said, 'You better eat with us,' and I said, 'OK'—but they didn't have any beefsteak! After that, they gave us kind of a herb tea.

"They were always very interested in working with us, and were never demanding of anything," King goes on. "They were always interested in good government, honesty and sincerity and children and the family—in human interest areas like protecting your health and furthering one's education, things of that nature. So over the years, we developed a very good working rapport."

Jack Cruz Hopkins, the executive-committee chairman of the state party's influential Chairman's Council, says that Sikh participation on the 40-member council has increased recently, from two to "perhaps six or seven" members. The Chairman's Council consists of party activists who pay $1,000 per year—or donate equivalent time or business services—in exchange for access to a "networking" roster of their fellow council members, plus private meetings with the governor, the state legislative leadership and members of the New Mexico congressional delegation.

Two Sikhs also sit on the state party's Finance Council, an umbrella organization for fund-raising activities chaired by Santa Fe lawyer Earl Potter. One of them, Daya Singh Khalsa, is an original member of the party's New Mexico Business Task Force, as well as an executive-committee member of King's Business Advisory Council. Khalsa works as senior vice president of the Sikhs' flagship business, Akal Security Inc., whose deputy commanding officer, Shanti Kaur Khalsa, was appointed several years ago to the New Mexico Commission on the Status of Women.

"The nice thing about the party in New Mexico is that you don't have to shell out huge sums of money to be involved," Daya Singh Khalsa says.

Indeed, a check of campaign contribution reports for a typical statewide election shows that Sikh contributions were relatively modest. During the 1986 campaign, for example, Yogi Bhajan gave $200 to Democratic gubernatorial candidate Ray Powell. And during the same year, records show, Shanti Kaur Khalsa made separate contributions of $30 and $55 to Democrat Bob McNeill's campaign for attorney general.

Both Daya Singh Khalsa and Yogi Bhajan have been inducted into the state Democratic Party's "Hall of Fame," in part for their work on behalf of the Sikhs' annual Peace Prayer Day—a summer event that draws as many as 1,500 politicians, educators and artists to a 140-acre parcel of Sikh-owned land in the Jemez Mountains, west of Española. Last year, attendees included Lt. Gov. Casey Luna, former Gov. Toney Anaya and state Democratic Party Chairman Powell, whom the Sikhs named their 1991 "Man of Peace,"

"The Sikhs really court the powers-that-be," observes one longtime Roundhouse insider. "They've got money and energy, and they put their money where their mouth is. So they're a real factor.

"I think they do it in part because Yogi Bhajan's got a big ego," the insider adds. "All these legislators and state officials give him respectability. Plus, the Sikhs are significant elements in the New Mexico business community. They work hard and deliver on their contracts and maintain a high level of morality, which are all big positives."

Like most Democratic leaders, party chairman Powell says the Sikhs' activist role is welcome, but he insists that there's no quid pro quo. "They're interested in the public and welfare and so on." Powell says. "But I'd be very surprised if they got anything as political favors in return." Eric Serna, the chairman of the state Corporation Commission, adds that while individual Sikhs have contributed to his election campaigns, "they've never asked anything of me, other than to be a guest at their functions."

Our involvement in politics isn't for gain or to make a point or to exert influence," says Daya Singh Khalsa. "As soon as we were established here, we got involved in the community and got to know the community leaders. Because the state is determined by the Democrat—and because the Democratic Party tends to concern itself more with social and family issues—Yogi Bhajan began to develop a relationship with Democratic leaders.

"Another reason [for the party activism] is that we [the Sikhs] have been well accepted in New Mexico. It's a state where people tend to include, rather than to exclude, and that's not the case everywhere."

Potter, the party Finance Council chairman, agrees on the Sikhs' fit with the Democrats. "The Sikhs have been good solid participants in the party on both the state and local levels," he says. "Their biggest emphasis is on world peace. Another big emphasis is on improving the economic climate in the individual communities. I also think they believe that international business and trade leads to international understanding."

Daya Singh Khalsa says that since Yogi Bhajan holds a doctorate in the psychology of communications, his advice on communications often is sought by political leaders. "I've seen public figures ask him, 'How should I respond [to a certain policy question]? And if I don't respond at all, how would that message be received?'" Khalsa recalls. The yogi also holds a master's in economics, Khalsa adds, an asset in his international travels as a "kind of unofficial goodwill ambassador" for New Mexico business.

"While he was on a recent trip to Asia, for example, he talked to some very wealthy businessmen and advised them to move their activities to New Mexico," Khalsa says. "He is very excited about the prospects for economic development here." He says, "Let's stop keeping New Mexico a secret! Let's let the world know that this is a great place to do business!'"

Certainly, New Mexico has been a great place for the Sikhs to do business. In the mid-1980s, their Akal Security (Akal means "deathless" in Punjabi) twice was named one of America's fastest-growing private businesses by Inc. magazine. Last summer, Akal's Daya Singh Khalsa played the key role in bringing the magazine's annual "Inc. 500" conference to Albuquerque and Santa Fe. In addition to Akal, which is headquartered in Española, Sikhs own and operate such Santa Fe-based businesses as the Zia Alarm Co., the GRD chiropractic/acupuncture clinic, two home-building firms called Khalexico and Tyaga & Co., and Teg Security.

With 50 employees and clients including La Fonda, Vivigen Inc. and the College of Santa Fe, Teg was recently spun off from Akal, a widely praised, 12-year-old company with 1,000 employees and clients ranging from the White Sands Missile Range near Socorro to the New Mexico State Fairgrounds in Albuquerque. According to State Fair manager Sam Hancock, Akal has won the fair's contract on a competitive bid basis since 1987, primarily because of its "great expertise in all forms of security. Its management is very stable, and its training programs are very good," Hancock says. The state fair contract is worth some $500,000 a year.

While the Sikhs have been oriented overwhelmingly toward the Democratic party in New Mexico, they are not averse to courting

influential Republicans as well. Yogi Bhajan nourished a close friendship with GOP Gov. Garrey Carruthers in the late '80s, and during the 1990 election, attended several events in support of Republican gubernatorial candidate Frank Bond, who was born and reared in the Española Valley.

"Carruthers is always kidding Yogi Bhajan, taking a voter registration up to Española, and telling him, 'Yogi, you ought to register where your heart is' "—with the Republicans, Bond says with a laugh. "Because the Sikhs are very strongly pro death penalty, very strongly militant. Plus, of course, they're the ultimate capitalists."

So long as the Democrats remain in power, however, the Sikhs' conversion to Republicanism seems unlikely. That seemed evident during a birthday bash for Yogi Bhajan at the Sombrillo ashram last August. A catered lawn party held beneath a scattering of white tents, the affair appeared to attract every important politician in the state.

Among them were Gov. and Mrs. King, Attorney General Tom Udall, state Personnel Director Judy Basham, state Tourism Director Michael Cerletti, National Democratic Committee members Art Trujillo and Mary Gutierrez, Supreme Court Justice Gene Franchini, former Interior Secretary Stewart Udall, Corporation Commissioners Eric Serna and Louis Gallegos, and Potter, the Democratic Party finance chief.

Not surprisingly, Bond was one of the few Republicans in sight.•

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senators STEVENS, SPECTER, DURENBERGER, and WOFFORD be recognized to address the Senate and at the conclusion of their remarks, the Senate stand in recess as ordered.

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

Mr. MITCHELL. Mr. President, I thank my colleagues. I yield the floor.

ON FINAL PASSAGE NIH REAUTHORIZATION

Mr. DURENBERGER. Mr. President, the progress of human knowledge in the area of science over the last two decades is almost too large to quantify. I think we know the major steps forward which previous generations took decades to accomplish now occur every year. That is the result of the talent of our people, the rewards which exist for successful research and the quantity of investment in the research, the capital which is brought together to begin and sustain promising research.

We, in America, certainly get what we pay for in medical research. There is probably no single location on the planet that is more responsible for this scientific progress than a place 10 miles from here called the National Institutes of Health.

The development of our fundamental understanding of the workings of the human body and mind that goes on there is literally writing our future.

As we try to shape the role of the Federal Government for our times, as our predecessors have done in theirs, the basic question is the same: what are the national purposes, those things which society needs that only a National Government can do? For a long list of reasons—national focus, efficiency of centralization, standards of excellence, maximum leveraging of private funding, et cetera—scientific research belongs near the head of that list.

That brings me to the bill before us. This bill, with the exception of title II which I will discuss shortly, represents a major step forward in Federal support for health research.

There are increases in funding for the National Cancer Institute and the National Heart, Lung and Blood Institute. There is an expanded commitment to research on contraception and infertility, children's health research, and trauma research and data collection.

The bill gently expands research on breast cancer and cancers of women's reproductive systems, which I have strenuously supported and which is long overdue. The additional funds increase support for basic and clinical research and prevention and education programs on these dread diseases. The bill also establishes on a permanent basis the Office of Research on Women's Health, and ensures that women and minority groups will be included in the design of clinical research projects.

The capacity of the National Library of Medicine has been expanded to promote rapid transfer of current medical information to individual physicians throughout the country.

As a Minnesotan, I also take pride in the work NIH supports in my State at the Mayo Clinic and the University of Minnesota. NIH grant awards are supporting the work of Dr. William Bourne's cornea studies, Dr. Bruce Kottke's heart disease research, and Dr. B. Lawrence Riggs' work on osteoporosis; these distinguished scientists work at the Mayo Clinic in Rochester.

At the University of Minnesota, NIH supports Dr. Henry Balfour's AIDS research, Dr. Henry Buchwald's work on the relationship between cholesterol and heart disease, and the transplantation breakthroughs of Drs. John Najarian and Arthur Matas.

As a Senator who has devoted most of his career to understanding this diverse and emotionally charged thing we call health, I know the role health research must play. We can change our financing and delivery systems and our Government programs all we want and do less to improve the health of our people than can be accomplished by the application of a few scientific discoveries.

Medical research also undergirds medical education, which develops talented men and women who serve our small towns and big cities, and who provide the discovery of new drugs and medical devices.

So in spite of my reservation on the subject I now turn to—fetal tissue transplantation—the balance for me tips strongly in favor of this bill, because of the contribution it can make to the health of America.

Mr. President, the vote I cast Tuesday in favor of the Hatch amendment, which was defeated by the Senate by a 77-23 vote, was probably the single most difficult vote I have taken in this Chamber.

I thank all those who participated in my continuing education on the scientific and moral issues at stake in this matter. I especially appreciate the many contributions of individuals like Joan Samuelson, Ann Udall, Dr. James Watson, Msgr. Brian Hehir and Rev. Guy Walden, and former and current Government officials like Dr. Bob Windom and Dr. James Mason.

I am grateful for the opportunity this debate has given me to learn more about the miracles of research taking place at the University of Minnesota in the areas of neurological disorders, diabetes, leukemia, metabolism, and immune deficiencies, under the leadership of Drs. Krivit, Sutherland, Chou, Uckun, and Twiggs. I regret that during the course of the debate their commitment to this field was misinterpreted. I think from my action here on the floor of the U.S. Senate, I trust the appropriate record has been made, and I know from experience that appropriate apologies to these great researchers have been made.

Let me say to begin with that I did see the Hatch amendment as a compromise between the status quo and the lifting of the ban on transplantation in the bill. It represented a de facto codification of the status quo as far as I was concerned.

My disposition on these issues, as I have already stated, is to support and give maximum opportunity to the scientific community to do what it does best.

About 100 years ago Thomas Huxley made the following statement: "Science commits suicide when it adopts a creed."

And that as well as I can express says much of the argument that has been presented to me about the problems with current NIH ban of fetal tissue transplant research. In order to meet very important human needs, science needs to go forward unencumbered.

But, Mr. President, I am not a scientist. I am a politician and a policymaker. Turning Huxley around, it would be akin to suicide for me as a Member of this Senate if I failed to put this judgment up against the creeds and basic values I held when I was elected to serve.

There were three issues I wrestled with to come to my conclusion: the question of whether this research would induce abortions; the question of whether a higher good justified the use of tissue from aborted fetuses for transplantation; and finally, the ques-

tion of whether the use of the tissue could be morally separated from the means by which it was obtained. I want to take them in that order.

First, when this issue came before the Labor and Human Resources Committee, my main concern was with the potential in this research that women now or at some future date would be induced to have an abortion. That was the chief argument made by Dr. Mason on behalf of the administration for the ban.

As a matter of deepest moral conviction, I have not and never will support abortion, as a personal choice or as Government policy.

Since that markup, I have become convinced that the inducement argument is not a sufficient reason to stop the research. I believe as a matter of policy that safeguards can be erected, such as those in the bill, which have a high probability of preventing medical personnel from offering financial or other incentives to women contemplating the option of abortion to make that choice.

I am sensitive to the argument that research will go on despite the administration's ban and the result may be a far more uncontrollable situation in the final analysis. Unless Government steps in and manages the research at the outset, many of the scenarios we fear most are more likely to develop. And that, to me is a very good argument. Ethical standards enacted with exact knowledge of consequences of discovery are vastly superior to those we put in effect at the infancy of research.

Second, Mr. President, the next issue, the higher good argument was troubling for me. I am not sure any of my colleagues explicitly made this argument to justify their vote, but it may have influenced their thinking. In other words, a little bit of wrong is all right as long as society received a lot of benefit from it. I cannot agree with that logic.

For example, the Member who is sensitized by the fact his daughter suffers from diabetes, a disease which might be affected by this research.

The New York Times published an editorial earlier this week which summarizes again as close as I could define my view. They were commenting on the situation of tiny Theresa Ann Campo Pearson, who was born with only a small portion of a brain, and who died on Monday.

Her parents sought authority to transplant her organs. It was denied, we know. The editorial concluded with these words:

> It is tempting, all right: this idea of transplanting organs that are useless to a baby like Theresa Ann to a baby whose life they might save. But it is also horrific: this turning of a baby into a farm to be harvested for organs while she is still alive. True, she could not know or feel; she could not experience her own tragedy. But the rest of us can. If we deny Theresa Ann Campo Pearson her humanity, then we have denied our own.
>
> What is true in her individual case, must be true for society. For me, there is no higher good than preserving life.

Government policy not only determines what is legal and illegal, it communicates messages, with the authority of the common voice of the people, that certain things are right or wrong. If we begin research on transplantation of fetal tissue from elective abortions, we start an irreversible process of making some abortions medically necessary in a new way—not for the mother's health, but for the good of society. That is the potential of that view, and that is the message it will send.

As a person opposed to abortion, I cannot consent to Government, in some way, giving its endorsement to abortion as a social good. That represents an indirect societal inducement, an officially sponsored imprimatur on abortion, which I believe—because of the creed I came here with—is wrong.

Third, the final issue is that of separation: whether the use of the tissue can be divided from the means by which it was obtained.

By voting for the Hatch amendment, which allows research to continue using tissue from ectopic pregnancies and spontaneous abortions, I made it clear that the transplantion research on fetal tissue was not wrong per se.

My bottom line is that where the fetal tissue essential to the transplant research comes from an act which I believe to be wrong—an elective abortion—I cannot give my consent to that research.

If abortion is wrong, I cannot conclude that the use of the product of abortion can somehow be made right. I cannot separate use of the tissue from the act which produced it.

Mr. President, I am painfully aware of the potential good we forgo if we continue the current ban, such as a treatment for Parkinson's disease or diabetes—and by the way, on the day I cast this vote, my dearest friend in my political life, Harold LeVander, died of Parkinson's disease—or help for those suffering spinal cord injuries or techniques for stimulating dormant brain cells we have carried around in our heads since birth.

I also know that my decision is at odds with many of my constituents, as it is with many of my colleagues. That makes it all the more difficult. It also means I must continue to weigh the consideration and the conclusions.

But popular or not, my conscience is clear.

Mr. President, having fought that fight and lost, having made that point, my dilemma was then whether or not to vote for this bill.

My staff has informed me that final passage on this bill will be what is known around here as a rated vote. Of the hundreds of votes I cast each year, a handful are pulled out by various groups and mailed out to my constituents as the record for the Members of the Senate.

I mention this because for the first time in my 14 years in the Senate, when the pro-life groups send out the record on this bill, my name will have a minus side next to it on a vote dealing with abortion.

My "aye" vote on final passage will probably be described as my "position on fetal tissue transplants." That is clearly not the case.

Many of our colleagues, Senators RUDMAN and DANFORTH in particular, have spoken about the frustration of being in the Senate. That we cannot seem to get anything done around here except increase the deficit.

Part of that frustration comes from being boxed in by these rated votes. One week it is pro-life or pro-choice. The next week it is pro-environment or pro-business. The next week it is pro-guns and pro-gun control. Unfortunately, we have allowed the raters to supplant our judgment and our conscience.

Last summer, many Members of this body received warnings on how our gun ratings were going to be affected if we voted for the Brady bill. Some of us worked for months to reach a reasonable compromise, always knowing that even a compromise would blemish our record. Ultimately, there was a compromise, the Mitchell-Dole amendment. We were warned that the vote on the Stevens amendment was going to be rated, and so was the Mitchell-Dole vote and so was final passage.

But raters only have the power we give to them.

Mr. President, this is not the Fetal Transplantation Research Act. It is the reauthorization of the National Institutes of Health. It will do a tremendous amount of good for the health of the citizens of this Nation. My constituents, scientists, physicians, patients, and regular people will benefit from its passage.

I believe in almost everything this bill works to accomplish. And regardless of what the raters say, I am going to use my final passage vote to support all the things I enthusiastically approve of in this bill.

I oppose fetal tissue transplantation research from electively aborted fetuses and I support this bill. On both those issues, my position and my conscience are clear.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. I thank the Chair.

(The remarks of Mr. STEVENS and Mr. SPECTER, Mr. WOFFORD and Mr. DURENBERGER pertaining to the introduction of S. 2530 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ORDERS FOR FRIDAY, APRIL 3, 1992, AND TUESDAY, APRIL 7, 1992

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m., Friday, April 3; that on Friday, the Senate meet in pro forma session only; that at the close of the pro forma session, the Senate stand in recess until 9 a.m., Tuesday, April 7, that on Tuesday following the prayer, the Journal of Proceedings be deemed approved to date and the time for the two leaders be reserved for their use later in the day; that upon disposition of House Concurrent Resolution 292, the Senate stand in recess until 2:30 p.m., in order to accommodate the respective party conferences.

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

RECESS UNTIL TOMORROW AT 11 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess.

Thereupon, the Senate, at 7:44 p.m., recessed until Friday, April 3, 1992, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate April 2, 1992:

DEPARTMENT OF STATE

LAURALEE M. PETERS, OF VIRGINIA, 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 SIERRA LEONE.

THE JUDICIARY

LOURDES G. BAIRD, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

ROBERT D. HUNTER, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA VICE E.B. HALTOM, JR., RETIRED.

MAUREEN E. MAHONEY, OF VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA VICE ALBERT V. BRYAN, JR., RETIRED.

DEPARTMENT OF COMMERCE

JOAN M. MCENTEE, OF NEW YORK, TO BE UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION, VICE DENNIS EDWARD KLOSKE, RESIGNED.

CONFIRMATION

Executive nominations confirmed by the Senate April 2, 1992:

DEPARTMENT OF STATE

EDWARD JOSEPH PERKINS, OF OREGON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS WITH RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, AND THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA IN THE SECURITY COUNCIL OF THE UNITED NATIONS.

THOMAS R. PICKERING, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, WITH THE PERSONAL RANK OF CAREER AMBASSADOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO INDIA.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING GEORGE MU, AND ENDING PAUL T. WALTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MARCH 18, 1992.