SENATE—*Thursday, September 24, 1992*

(Legislative day of Wednesday, September 23, 1992)

The Senate met at 8:45 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore [Mr. KOHL].

The ACTING PRESIDENT pro tempore. Today's prayer will be offered by our guest chaplain, Rev. Merv Olson, pastor of the Gold Hill Lutheran Church in Butte, MT.

PRAYER

The Reverend Merv Olson, pastor of the Gold Hill Lutheran Church in Butte, MT, offered the following prayer:

Let us pray:

Lord of the nations:

Help us to realize that the attitude with which we approach our work each day does have an effect on our results.

Give us grateful hearts for the freedoms that we enjoy but all too often take for granted, abuse, or neglect.

Help these leaders to remember that the decisions they make here are judged not only by voters but by You.

Guide us with courage and resolve.

Lord, give us the courage to change our minds when we are so guided and also the grace to listen.

Bless the families of all who work here.

Keep us from unkind words as well as from unkind silences.

Guide us to live with a sense that we are all role models for those who follow us in history.

And thank You, Lord, for Your grace and forgiveness that makes new beginnings possible in Christ's name. Amen.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order the leadership time is reserved.

THE FAMILY AND MEDICAL LEAVE ACT—VETO

The ACTING PRESIDENT pro tempore. There will now be 1 hour for debate on the President's veto message on S. 5, which the clerk will report.

The assistant legislative clerk read as follows:

Veto message to accompany S. 5, an act to grant family and medical leave under certain circumstances, and for other purposes.

The veto message is as follows:

To the Senate of the United States:

I am returning herewith without my approval S. 5, the "Family and Medical Leave Act of 1992." This bill would mandate that public and private employers with 50 or more employees provide their employees with leave under certain circumstances.

I want to strongly reiterate that I have always supported employer policies to give time off for a child's birth or adoption or for family illness and believe it is important that employers offer these benefits. I object, however, to the Federal Government mandating leave policies for America's employers and work force. S. 5 would do just that.

America faces its stiffest economic competition in history. If our Nation is to succeed in an increasingly complex and competitive global marketplace, we must have the flexibility in our workplaces to meet this challenge. We must ensure that Federal policies do not stifle the creation of new jobs or result in the elimination of existing jobs. The Administration is committed to policies that create and preserve jobs throughout the economy—serving the most fundamental need of working families.

My Administration is also strongly committed to policies that foster a complementary relationship between work and family and encourage the development of a strong employer-employee partnership. If these policies are to meet the diverse needs of our Nation, they must be carefully, flexibly, and sensitively crafted at the workplace by employers and employees, and not in Washington, D.C., through Government mandates imposed by legislation such as S. 5.

Therefore, I have transmitted to the Congress legislation to establish an alternative flexible family leave plan that will encourage small- and medium-sized businesses to provide family leave for their employees.

My flexible family leave plan is based on a refundable tax credit for businesses that establish nondiscriminatory family leave policies for all their employees. A refundable tax credit of 20 percent of compensation (for a credit of up to $100 a week—to a maximum total credit of $1,200) would be available for all businesses with fewer than 500 employees, for a period of family leave up to 12 weeks in length. Family leave would include the birth or adoption of a child or the care of a seriously ill child, parent, or spouse. It also would cover a serious health condition that prevents the employee from performing his or her job. This approach will cover almost all workplaces—smaller companies that S. 5 does not cover that are less likely to provide leave to their employees. My plan covers about 15 million more workers than would be eligible under S. 5 and 20 times the number of workplaces. Those not affected by my plan work for large businesses, which generally have established family leave policies.

I want to emphasize again that my bill will help where the concern is most acute—with small- and medium-sized businesses and the workers in those businesses. S. 5 misses these key workplaces by excluding businesses with fewer than 50 employees. We know that these hard-pressed small companies usually offer fewer benefits than large firms, that they generate most of our new jobs—in fact, they provide the majority of people with their first job—and that they are more likely to employ women and reentrants to the labor force. Under my proposal, many more of the millions of men and women employed by smaller businesses would be able to take advantage of family leave.

The tax credit approach to the family leave issue will provide the flexibility workers and employers need to enable them to establish the optimal package of benefits that meets their particular needs. This way the parties can decide which package of benefits is best suited to them. In addition, because a tax credit is not a mandate, it does not put struggling firms at an economic disadvantage in the global marketplace. It maintains the competitiveness of American business while providing the benefits American workers need. It provides positive incentives, not mandates with veiled costs that impede growth.

Both the House and Senate passed family leave legislation almost 1 year ago, but they have kept it in the filing cabinet until now. That is nearly an entire year with no action or any willingness to depart from a federally mandated approach, only an interest in politicizing the issue.

I have proposed a truly flexible family leave program. I am willing to work with the Congress to get it passed and signed into law immediately.

There appears to be a pattern here. Three years ago, my Administration had a fundamental disagreement with these same congressional committees on child care policy. It took the Democratic-controlled Congress more than a year to get the point—I would not buy a Government-controlled and mandated child care program. When they

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

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got serious, we rapidly hammered out flexible child care legislation patterned after my proposal, that allowed *individuals* to choose their benefits.

The same holds true for family leave. If the Congress is serious about encouraging family leave, I ask those Members of Congress who have joined me in the past in opposing Government mandates to work with me again. The Congress should pass a family leave bill quickly that provides positive incentives for family leave and is responsive to the needs of workers and employers.

GEORGE BUSH.

THE WHITE HOUSE, *September 22, 1992.*

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Connecticut [Mr. DODD].

Mr. DODD. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. DODD. The 1 hour of time is to be equally divided between the opponents and proponents?

The ACTING PRESIDENT pro tempore. It is to be equally divided between the two leaders or their designees.

Mr. DODD. Mr. President, with one swipe of the veto pen on Thursday evening at approximately 8 p.m., the President denied a very basic standard of human decency to millions of working families throughout this country of ours. The President had a chance to make an old campaign promise the new law of the land, to break new ground, to replace the rhetoric of family values that we have heard so much of in the last number of months with real policy that values families, to provide working parents with the same job security that every industrialized nation in the world provides. In fact, Mr. President, I gather some 70 nations around the globe provide family and medical leave to their people.

But two nights ago the President said "no" to American families and, unfortunately, a "yes" to some of the special interest lobbies that inundate this city. He vetoed the Family and Medical Leave Act of 1992, the second time he has done this now in his 4 years as President.

Let me begin by stating what this bill is not: It is not a partisan battle. We are very proud of the fact that this legislation is strongly supported by Members of both sides of the aisle here in the Senate, and I am particularly grateful to my colleagues, Senator BOND, Senator PACKWOOD, Senator COATS, Senator CHAFEE, Senator COHEN, Senator D'AMATO, Senator DANFORTH, Senator DURENBERGER, Senator HATFIELD, Senator JEFFORDS, Senator MCCAIN, Senator MURKOWSKI, Senator ROTH, Senator SPECTER, and Senator STEVENS.

For those who may not be familiar with the party affiliations of all those Senators, every single Senator I have just mentioned is a member of the Republican Party.

Nearly three-quarters of the Senate, the last time this issue came before the Senate, supported this legislation. There are 37 House Republicans who also strongly support this legislation, including MARGE ROUKEMA of New Jersey, HENRY HYDE of Illinois, and many others.

So the effort to describe what is occurring here today as somehow a partisan contest to embarrass the President is not the truth at all. In fact, there has been a concerted effort over these past 7 years, when I first introduced this legislation in 1985, to build a strong bipartisan coalition around this idea of fundamental decency, to be able to guarantee people who are confronted with a tragic family situation or a joyous family situation, the arrival of a new infant through birth or adoption, or the tragic illness of a child or parent they are caring for or spouse, to just say during those times of crisis, we realize you should not have to make a choice between your job and your family; that we are prepared to tell you you can take a few weeks of leave in order to be with that family member during that crisis. You will not get paid during that period of time. We will maintain your health insurance, because we know how important that is; and that when you get through that crisis come on back to work. We will try to guarantee the same job you had, or at least an equivalent job, so you need not worry about your economic security while you are dealing with the security of your family, both of which are critically important today given the economic conditions in this country, where literally thousands, millions of people are losing their jobs. They are faced with family crises, putting additional pressure on those who are tenuously holding on to their jobs.

So we are saying, in terms of economic security and family security during a crisis, we are prepared to tell you, take care of that family problem and come back and be that employee that will do the job for your employer and for your own economic security.

We have been told recently by certain interests that this legislation is a mandate, that it is an outrageous thing mandating a benefit like this.

This is not a dental plan, Mr. President. It is not a vacation day we are talking about here. We are talking about a fundamental principle of human decency that recognizes the importance of families and the importance of job security.

We have heard the same argument in the past every time a proposal like this has been raised. When the issue of child labor laws were raised, the same arguments were made: Employers ought to be able to decide that issue for themselves.

The occupational safety and health standards, the same argument was raised: Provide a tax credit for the business, offer them tax credits so they will do the right thing. For the civil rights legislation, it was the same argument.

But minimum fair labor standards, every time one is raised they give the argument that the sky is falling. Well, of course, the facts tell us an entirely different story.

I would like to share with my colleagues briefly some of these statistics. There was a 1990 study commissioned by the President's own Small Business Administration that found that—and this is a quote from their report. This is not now a report done by our subcommittee or some partisan group in the country. This is the President's own appointees running this the Small Business Administration, when asked to make an assessment of the family and medical leave legislation said the following: "The net cost to employers of placing workers on leave is always"—always, Mr. President, not sometimes, not maybe, not occasionally, but always—"substantially smaller than the cost of terminating an employee." That is the Small Business Administration under President Bush's administration making that quote.

A 1992 update by the authors of this study found that 300,000 jobs had been lost and some $500 million in unnecessary hiring and training costs to business since the President vetoed the family and medical leave legislation in 1990.

My colleagues will recall that in 1990 this bill was sent to the President and he vetoed it. This study, done by Cornell University, the same group that did the study for the SBA, said that 300,000 jobs were lost as a result of not having a family and medical leave policy in place.

Much of the argument on the tax credits that we will hear about this morning indicates what a loss it is to business to have family and medical leave legislation. There is a study conducted by the very people that did the study for the SBA saying business lost $500 million as a result of losing those employees, hiring new people, and training people all over.

But it goes on further, Mr. President. Internal company studies: The Aetna Insurance Co. in my State reported in an internal study that they had saved $2 million annually as a result of incorporating family and medical leave legislation.

The irony of ironies is that recently the President was in New Jersey giving a speech about family values and about the family and medical leave legislation. He gave the speech in New Jersey at AT&T. New Jersey has had a family and medical leave law in place for several years and it has worked, according to all studies done there among business groups, extremely well.

But even more ironic, AT&T, where the President made the speech, has had a family and medical leave policy in place. And their study of the impact of the family and medical leave legislation on their bottom line is the following: We saved $15 million as a result of our family and medical leave policy.

Here the venue, the very site where the President is talking about the cost of this legislation on business, the very corporation has its own study which says we save $15 million as a result of the family and medical leave policy in place. In the State and at the company site, both locations of course have family and medical leave legislation.

Further, the study of four States commissioned by the Ford Foundation studied the States of Minnesota, Oregon, Rhode Island, and Wisconsin, four States that have family and medical leave legislation; all of them and several other States like New Jersey. They did a study of business employers in the States several years after the family and medical leave legislation was in place and asked them what has been the impact, what has been the burden. Ninety-one percent of the employers reported in that study that the leave laws were easy and inexpensive to implement. Those are the businesses that are living with the laws.

Now we are going to be told today about some future problems that some think they are apt to face.

Why not listen to the very businesses that are, in fact, experiencing the law, or that have imposed it or put it in place themselves? What they are saying about it? Why are we listening to people who have no experience with this whatsoever? Here we have 91 percent of the employers saying it is easy and inexpensive to implement.

So, Mr. President, I would hope that as we listen to the debate this morning and my colleagues would appreciate how important this issue is, let us just ask—and I will make this last point because I have colleagues here that want to be heard on this issue. I do not think anyone would doubt for one single second that—and God forbid anything does—in the President's family or to administration officials, if something happened to a child, a grandchild, a spouse, or one of their parents, what would that administration official do? What would anyone of us do? What have our colleagues done in the past when being confronted with a major family crisis? They scrapped their official schedules, they abandoned whatever meetings or appointments they had, and they went to be with their family.

How many times here have we known of colleagues of ours who have done that? And what has been our reaction when AL GORE, our colleague from Tennessee, spent time with his child who was almost killed in an automobile accident? What was our reaction when the distinguished Senator from Utah [Mr. GARN] donated a kidney to one of his daughters, missed a lot of votes and committee hearings for a number of weeks? What was our reaction then and on numerous other occasions?

Our reaction was, you did the right thing. You did the right thing. You went and spent time with your family. You missed your votes. You missed your committee hearings. You missed your appointments in the State, in the office. You did not lose your pay. You did not lose your job. And you came back and everyone said you did the right thing.

And I have no doubt, as I stand before you this morning, Mr. President, that if President Bush today were confronted with a similar fact situation, I know what he would do.

All we are saying with this legislation is, if it is good enough for a Member of the Senate, if it is good enough for a Member of the House, if it is good enough for a member of the administration, why is it such an outrageous idea for the average person in this country holding down a job, faced with a similar situation, that we cannot say to them: Be with your family, and we will do our best to hold on to your job—without paying you, by the way—during that period of time?

That is all this legislation says. This is not a radical idea. It is an idea that is rooted in the demographic changes that have occurred in this country.

Twenty-six percent of all children are being raised by single parent families today; 55 percent of all women are in the work force; 50 percent of women with children under the age of 1 are in the work force today.

Does anyone of us doubt for a second that these people are confronted with economic as well as family problems from time to time, two-income earners, sometimes holding three and four jobs to make ends meet. They are faced with family problems. A child gets sick; a parent they are caring for. There are a million women in this country today who are caring not only for their children but their parents under the same roof. Does anyone doubt for a single second that from time to time there may be a serious problem with parents you love or a child you care about and you have a job to do and yet we know since 1990, 300,000 people have lost their jobs in this country because what we are arguing for today is not in place.

That is why this is so important. We can argue all the various machinations and statistics and we will hear about tax credit ideas. That idea has been in place on child care. Only 1 percent of employers have taken advantage of the tax credit for child care; in 6 States, only 76 employers have taken advantage of the tax credit for child care. In fact, the President himself said it better, I think, than anyone else could have said when asked about a tax credit for child care. Let me just read what he said at the time the tax credit proposal was proposed for child care:

> Employers have a major role in helping parents find needed child care, but I do not support giveaways of taxpayer dollars to get business to recognize what it already knows: that it must provide assistance for more and better child care.

The tax credit idea which some are suggesting, which some 7 years after the fact, within about an hour of the time the veto message was sent, says employers are eligible only if they have fewer than 500 employees. That excludes 40 percent of all working women. Forty percent of all working women would be excluded under that proposal; more than 20 percent of the total work force.

It gives no protection for millions of employees who work for nonprofit entities, or who work here in Congress or for State or local governments. We are talking about making sure that Congress is covered by the same regulatory scheme that the private sector is. Here we are going to have a tax credit for the private sector yet not for employees of the Federal Government. Asking the Government to do what the private sector does is not included under that particular idea.

There are vague references to job protection and the like, but we will get to a broader discussion of the tax credit idea, I presume, during this debate this morning.

Mr. President, to come back to the central point here. The central point is this is an idea whose time has long since come. It is long overdue. My hope this morning is my colleagues will send a message to the President that we want this to be the law of the land. It is not a partisan battle. It never has been, despite the efforts of some to claim it to be such.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I have a great deal of respect and admiration for the distinguished Senator from Connecticut. He has worked long and hard for this bill. And if my vote were based on the level of his commitment to this legislation I would have to vote for it. I know his intentions are good and honorable. He and I worked very hard together, side by side, to put through the first real child care bill in the history of the Congress. And it is working. And it is working well throughout this country.

But I just do not believe this bill is good policy, despite its good intentions.

The Family and Medical Leave Act is packaged as a profamily, all-American piece of legislation. But once you strip away the fancy ribbons and brightly colored bows, what you have is an un-

precedented, inflexible, Government-mandated employee benefit that will strangle both individual and employer flexibility in addressing workplace needs. It is a radical change in law despite a few minor adjustments.

First, Mr. President, we can argue all day about the cost estimates of this bill. But, the plain fact is that this proposal is not free. It is going to cost billions of dollars. The Small Business Administration estimates between $1.2 and $7.9 billion. We all know how the estimates back here work out in the end. They never work out lower, they are always higher.

And the plain fact is that Government mandates, no matter how well-intentioned, do not contribute to economic recovery and growth. Resources spent to comply with Federal mandates cannot be spent to create jobs.

These mandatory costs on business are not good for the economy as a whole. Employers must be free of the same kind of rigidities that have plagued the economies of many nations in Europe, which are undergoing some very difficult times.

Every new requirement we impose on business—particularly on small business—renders American industry less able to adapt to changing economic conditions and times. We become, naturally, less competitive.

Second, despite the impression some may have about the number of workers able to receive benefits under S. 5, this bill that is argued for so vociferously by the distinguished Senator from Connecticut, employees in 95 percent of U.S. businesses will receive no benefits at all.

In a weak attempt to limit the damage of its costly and burdensome mandate approach, S. 5 excludes businesses with under 50 employees. In other words, almost half of the U.S. working family members are not even eligible for these benefits despite the mandate.

Who are these excluded workers? Let me tell you who they are, Mr. President. A report that was transmitted to the Congress, titled "The State of the Small Business: A Report to the President," states clearly that "women * * * are more likely to be employed in small firms." It seems quite obvious to me that, if small businesses with 50 or fewer employees are exempt and if small businesses hire a disproportionate number of women, S. 5 has missed its mark. This legislation is not covering those individuals the bill's sponsors say it is supposed to help.

Furthermore, Mr. President, even with respect to those workers actually covered under S. 5, we need to examine whether this unprecedented Federal mandate will truly result in more choices and flexibility?

You see, the President does not believe that it will. He believes it is another one of those mandates that will force businesses to go out of business. And especially small businesses, those that are maybe slightly over 50 employees.

President Bush, in straightforward, unambiguous language, addressed this question in his veto message of June 29, 1990:

> We must also recognize that mandated benefits may limit the ability of some employers to provide other benefits of importance to their employees. Over the past few years, we have seen a dramatic increase in the number of employers who are offering child care assistance, pregnancy leave, parental leave, flexible scheduling, and cafeteria benefits. The number of innovative benefit plans will continue to grow as employers endeavor to attract and keep skilled workers. Mandated benefits raise the risk of stifling the development of such innovative benefit plans.

That is what the President said, and he is right.

The President closes:

> My Administration is strongly committed to policies that recognize that the relationship between work and family must be complementary, and not one that involves conflict. It these policies are to meet the diverse needs of our Nation, they must be carefully, flexibly, and sensitively crafted at the workplaces by employers and employees, and not through Government mandates imposed by legislation such as (this).

Clearly, no one wants to help American families more than President Bush does. I do not think anybody does. Or more than I do. We all want to help American families meet the numerous challenges they face in balancing the demands of their work and personal lives.

In his recent veto message on this bill, the President reiterated that if family policies:

> * * * are to meet the diverse needs of our Nation, they must be carefully, flexibly, and sensitively crafted at the workplace by employers and employees, and not in Washington, DC, through Government mandates imposed by legislation such as S. 5.

In fact, polling data indicate that 89 percent of working Americans clearly stated a preference to negotiate their benefits with employers, so that benefits could better reflect areas meeting their individual needs. Remarkably, less than one-third of the working Americans questioned thought that family leave benefits should be mandated by the Federal Government—less than one-third.

This particular chart shows the variety of benefits often compromise an employee's total compensation. For instance, this shows the benefits to private industry. All of these, the red, the green, the orange and the blue, and the orange again—all of these are negotiable benefits; every one of them.

These are the legally required ones; almost a third of all benefits are mandated upon business in general.

This is, of course, very, very important because there is only one pie. And there is only so much that an employer can do in these tough economic times to provide benefits for the employees.

In this case they are already mandated by the Federal Government, State government, and otherwise—mandated to provide about a third of all the benefits in mandated ways. These others are negotiated, benefits that people want, that they have negotiated for and that they would rather have the right to get.

So if we listen carefully, we would learn that what people really want is flexibility to choose, not mandates by us wonderful thinkers back here in Washington.

They are not interested in having Congress make these decisions for them. Regardless of the well-intentioned motivations of Members of the U.S. Congress, people are clearly telling us that they do not want the Congress to lock them into a one-size-fits-all policy. They want room to maneuver, room to negotiate, not locked into a one-size-fits-all policy.

When the Senate considered this bill last year, I offered an amendment that I believe provided greater flexibility for families. My amendment was not a mandate on an employer to hold a job open for 12 weeks or to pay unearned benefits. Likewise, it was not a mandate on employees to limit themselves to just 12 weeks leave. The Hatch amendment covered all businesses, large and small, not just some, but all businesses, large and small, and would have permitted employees to take as long as 6 years unpaid leave for the birth or adoption of a child or up to 2 years in the case of a serious illness of a family member.

My amendment would have given the leave-taking employee a preferred right of rehire to the same or equivalent job and would have returned all of the employee's accrued benefits, such as seniority and pension rights. That was fought against by some, and the reason it was is because even that had the aspects of another mandated obligation on business in keeping it open to save the seniority and pension rights and keep those intact even though they might take up to 6 years for parental leave and 2 years for illness.

My efforts were an attempt to address the great paradox of S. 5, the Family and Medical Leave Act. The bill we are debating today that the President has vetoed, and I think rightly so, purports to help families by mandating 12 weeks of unpaid leave. We can speculate, however, that this bill will actually help very few families. As I have already mentioned, it excludes a large segment of the work force.

First, even if those employees covered are limited to 12 weeks of unpaid leave, it is the position of many child development experts that 12 weeks is insufficient for parent-child bonding. It is also obvious that many serious illnesses do not confine themselves to 12 weeks.

I know the Senator from Connecticut would have preferred a longer period of mandated leave, but therein lies the problem, Mr. President. The Senator from Connecticut, along with other sponsors of this bill, realizes that there are costs to this bill. In order to afford this bill, the period of required leave had to be shortened or you could not afford it at all, and I question whether we can afford it anyway for the limited benefits that it really conveys—or mandates should be a better word. These tradeoffs have been made thus far on an individual employer or individual employee basis. But S. 5, Mr. President, is as bad as Congress trying to set up uniform wage rates or job descriptions. It is impossible, and we should not be doing it.

President Bush, as well as every legislator I have spoken with, supports family leave policies in the workplace. This fact is evidenced by legislation which the President has transmitted to Congress and which was found by the distinguished Senator from Idaho, and I think rightly so, and I compliment him for it.

The President is offering a family leave policy for almost all employees. He is offering a program that is flexible for both employees and employers, and he is offering a program that will benefit American families without jeopardizing American jobs.

President Bush's approach is a flexible family leave plan based on a refundable tax credit for businesses that establish nondiscriminatory family leave policies for all of their employees. It provides a tax credit of 20 percent of compensation to businesses with fewer than 500 employees for a period of family leave up to 12 weeks. Those with more than 500 employees already have voluntary family and medical leave practices. Under 500 is where the problem is and even under 50, which is not covered here, and that means a high percentage of businesses will not be covered by this bill.

But the President's bill will cover them, and it will cover the women who really do need the help, which this bill will not. Notably, the President's approach will apply to smaller companies that S. 5 does not cover. The President's proposal covers about 15 million more workers than would be eligible under S. 5 and 20 times the number of workplaces—15 million more workers and 20 times the number of workplaces.

In conclusion, I simply reiterate that our differences with respect to this bill are not over motivation. The President has the same motivation as the distinguished Senator from Connecticut, and I certainly do, as a father of 6 and grandfather of 13. I think it is wonderful if we can have voluntary family and medical leave, but to mandate it is just another mandate taking away from the negotiable benefits that people prefer and putting them even more in this category of 32.9 percent of mandated benefits that we wonderful Members of Congress and other leaders of Government have imposed upon the American people.

So our differences are not over motivation—I think everybody agrees it is a wonderful thing—but only over approach. The President's proposal offers a framework that permits us to go forward and enact family leave legislation before Congress adjourns this year. If we are all serious about family leave legislation, we ought to sit down, resolve our differences, and move one step closer to helping America's families. We can and we should do it, and we ought to do it today. But this bill, again, leaves out a lot of families that could be helped. The President brings them in so they will be helped, and he does it in a flexible way that does not build on this mandated part of the total pie of benefit packages available to employees. It builds on these alternative negotiable benefit parts of the total pie, which is really the way America has gown and developed through the years in the best possible way.

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

Mr. PACKWOOD addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. PACKWOOD. Mr. President, will the Senator from Connecticut yield me 2 minutes?

Mr. DODD. Mr. President, I will be delighted to yield to a strong supporter and someone who has been a significant factor in the passage of this legislation, Senator PACKWOOD.

The ACTING PRESIDENT pro tempore. The Senator from Oregon [Mr. PACKWOOD] is recognized.

Mr. PACKWOOD. Mr. President, needless to say, I am disappointed the President has vetoed this bill, but we have a chance today to prove what we did when we passed it, and that is we mean it and we vote to override the veto.

This is not like we are starting down the road on some newfangled experiment. Eleven States and the District of Columbia already have family leave, and I am proud to say Oregon was one of the pioneers. We passed it in 1987. It has worked so well that a study by the Families and Work Institutes, commissioned by the Ford Foundation, reported in 1991 that 91 percent of the employers in Oregon say that family leave has caused them no problems with implementation.

So, Mr. President, I urge a vote to give the workers in all States the same guarantee of job security that families now have in Oregon. This is the fair thing to do. It is the right thing to do. It works, and employers who have had experience with it say that they can make it work very well.

I very much join the Senator from Connecticut and the Senator from Missouri and others and urge that we override the President's veto on this bill. I thank my friend from Connecticut.

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Idaho.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Idaho [Mr. CRAIG] for 5 minutes.

Mr. CRAIG. Mr. President, I thank my colleague from Utah for yielding.

Let me start this morning in support of President Bush's veto of S. 5 by making it very clear to all of us here that this is not a partisan issue. Some have said in the last 24 hours that our President speaks about the family, but he will not do anything for the family. The timing of the release of this legislation, the passage of it, to go to the President for his signature or his veto after it laid idle for 10 months seems to draw the question that, in the final hours of this 102d Congress and in the latter days of a heated Presidential campaign, there was an attempt to skew this into a partisan issue.

Let me suggest this morning, Mr. President, that all of us, Democrat or Republican, are for some form of parental family leave. The question is, How do we get there? Do we allow the Federal Government to step forward with a mandate and say this is what you are going to do? Or do we create an environment in which it happens because of a voluntary effort on the part of the employee and the employer working together?

My colleague from Connecticut speaks of New Jersey. It was not a Federal mandate that caused a parental leave program in New Jersey.

We have just heard our colleague from Oregon speak of a program in Oregon. It was not a Federal mandate that created the program in Oregon. It was the ability of that State and its employees and its employers working together to craft a flexible program like the Senator from Utah has spoken to and that the American people have spoken so clearly to, that has resulted in those kinds of dynamics, to create those kinds of programs.

Yet S. 5 that our President vetoed would go in totally the opposite direction and in doing so, it misses the mark. Here is a graph that dramatically shows what a program that is loudly touted to be the absolute answer to this most difficult problem in the workplace addresses, S. 5, number of businesses, 300,000; the President's proposal, 6 million. Number of workers S. 5, vetoed, 33 million; the President's, 15 million more, or 48 million.

Yesterday I introduced a flexible tax credit approach for the President and for 15 other original cosponsors in this body, S. 3265, known now as the Family Leave Tax Credit Act. Here is the difference between the S. 5, and an incentive or a carrot, S. 3265, which will address millions more Americans, mil-

lions more workers, broaden the base of the perspective as it relates to small business where the growth of American employees are at this moment, recognizing that an employer with one to an employer of 500 can now get involved in a program of working with his or her employees to provide for a nondiscriminatory program that results in much, much greater benefits.

I think our President has spoken very clearly. He will not use the Federal mandate. He and many of us do not believe in that approach. But we do believe in creating a positive environment for the energy of the employee and the employer coming together to craft the individual program whether it is for a new birth, whether it is for an adopted child, whether it is for an elderly parent, whether it is for a spouse. That is the kind of program that I think this Senate wants to see created.

We have the responsibility, Mr. President, to craft an environment that allows that kind of synergism to go on in the workplace that would result in this kind of legislation. That is the kind of an amendment that I propose in the form of the legislation.

My colleague from Utah spoke about his amendment last year, that I supported this past year. Yet we know what happened. We know that as soon as my colleague from Connecticut had the votes to force the mandate, nothing else was going to happen in this body. There was no other good-faith effort to consider a balanced approach. Once you had the votes you were going to cram it through and put it on the President's desk. And that is just what happened.

But you are going to wait until the last minute so the rhetoric could raise up as a result of this being an election year and, or more importantly, that this was going to result in that this is a difference between the Republicans and Democrats.

Let me tell you, I think you know, Mr. President, this is not. The question is how do we get this? How we get this is exactly the approach that I have introduced in S. 3265 and it is the approach that my colleague from Utah spoke of.

In doing so, and in offering this approach as I said, we are talking about all businesses up to 500 employees. The AT&T's that our colleague from Connecticut spoke to have these programs already and, of course, they employ thousands upon thousands of people. They did it freely without a Federal mandate, through a negotiated relationship with their employees.

But in the smaller businesses where the majority of the employees are today, that is where the new legislation directs its energy. So from zero or from 1 to 500 employees, where we have 20 percent of total employees compensation up to $2,000 per month, this would yield $100 a week for 12 weeks in tax credit.

As I have mentioned it is a very broad based approach from adoption, birth, to the care of a spouse, to the care of an elderly parent, and it recognizes the coverage and the assurance of the maintenance of health care and pensions contributions, partial pay, and bills, or allows to be built components for a flexible benefit package to assure that those kinds of benefits are not lost during a period of that type of leave.

Those are the facts.

Mr. President, I urge my colleagues to support the veto of S. 5, the mandated family and medical leave bill, and to cosponsor and support a positive alternative introduced by myself and more than a dozen of our colleagues yesterday, S. 3265, the Family Leave Tax Credit Act. This is the bill recommended by the President to the Congress last week, which is similar to S. 841, a family leave tax incentive bill which I introduced more that 17 months ago.

I have prepared a brief side-by-side analysis comparing our legislation to the vetoes bill, and ask unanimous consent that this analysis be printed in the RECORD.

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

COMPARISON OF DIFFERENT FAMILY LEAVE APPROACHES, SEPT. 24, 1992

	Federally mandated Family Leave Act S. 5/ H.R. 2 (Dodd-Clay)	Flexible Family Leave Tax Credit Act S. 3265/ H.R. 6003 (Craig-Goodling)
Business workplaces covered.	Those with 50 or more employees (about 5 percent) [1].	Those with 500 or fewer employees (99.8 percent).[2]
Employees in covered workplaces.	40–50 percent [1]	80.5 percent.[2]
Type of legislation	Federally mandated fringe benefit.	20 percent refundable tax credit incentive.
Budget revenue impact.	NA [3]	$500,000,000 in fiscal year 1993; $2,700,000,000—5 yr.[4]
Cost imposed on employers.	$2.4 billion minimum [5]	NA—leave is based on employee-employer negotiation & encouraged by tax incentive.
Type of leave	Unpaid Birth, adoption, serious health condition of child, parent, or employee.	Unpaid or paid. Same.
Health coverage continued.	Yes	Yes.
Job and benefits protected/reinstated.	Yes	Yes.
Enforcement	Secretary of Labor issues regulations; aggrieved employee obtains complaint and enforcement from Secretary or files civil action.	Secretary of Treasury issues regulations; credit is conditional on leave granted.

[1] Source: Committee reports on S.5/H.R. 2.

[2] Source: Office of Management and Budget.

[3] In the committee reports on S.5/H.R. 2, the Congressional Budget Office estimated no revenue impact. Since the additional costs mandated will likely cause the loss of thousands of jobs and much taxable income, this conclusion is arguable.

[4] Source: Department of Treasury.

[5] Based on a combination of General Accounting Office and Small Business Administration methodologies. In 1991, SBA estimated that 12 weeks of mandated maternity leave alone would cost employers $1.2 to $7.9 billion a year. GAO's earlier report estimated this type leave would account for about half of the leave taken under the mandate bill.

Mr. CRAIG. Mr. President, I discussed my bill back then with colleagues, the business community, family advocates, and the administration. I did not offer my bill as an amendment when the Senate took up S. 5 just under a year ago because it was as obvious then as it is now that no alternative was going to be given serious consideration until after a veto was sustained.

The proof of that fact came in the treatment accorded the one major substitute that was offered at that time. Those of us who had a variety of ideas on alternatives to mandated benefits decided to support one of them and deferred to the distinguished ranking minority member of the Labor and Human Resources Committee, Senator HATCH. The gentleman from Utah had put much thought and effort into his bill, the preferred rehire alternative. I know he and his staff were working on it well before the beginning of the 102d Congress and that it was a very serious undertaking. But, when it came to the floor, arms were twisted, the special interest groups howled, and Senator HATCH's very good proposal was not given the consideration it deserved. It was obvious that the same fate would befall any other serious alternative, as well.

But now, we have in hand the vetoed S. 5. We all know this veto will be sustained—as it ought to be. We knew this 10 months ago, when both bodies had passed S. 5, and it is regrettable that it took 10 months for Congress to send the bill 16 blocks down Pennsylvania Avenue for what always was a certain outcome.

Now we have the opportunity to really consider all sides of this issue fully and seriously. If the supporters of S. 5 want a bill signed into law this year—possibly even this month—they can now come to the table with us who support family leave but oppose mandating benefits.

Our bill, S. 3265, offers the compromise approach of creating a new, refundable, 20-percent tax credit that would be a powerful incentive for employers to offer family and medical leave benefits.

I would like to insert in the RECORD at this point a description and factsheet on this legislation. Also, I would like to insert a statement of endorsement by CARE, the Concerned Alliance of Responsible Employers, which represents more than 1 million employers, nationwide. I ask unanimous consent that these materials be printed in the RECORD.

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

FLEXIBLE PARENTAL LEAVE POLICY

President Bush has consistently supported employer policies to provide parental leave. But he has opposed mandates that require businesses to provide leave to employees. These mandates are a hidden tax on employers and employees that will cost the economy thousands of jobs.

However, the President supports tax credits for employers that will encourage flexible

parental leave policies without stifling economic growth.

PARENTAL LEAVE TAX CREDIT

The Administration supports refundable tax credits for businesses that establish nondiscriminatory parental leave policies. The credit would be available for:

All businesses with under 500 employees, so long as the benefit is provided to all employees on a nondiscriminatory basis;

For 20% of total employee compensation of up to $2,000 per month, for a period of up to 12 weeks;

For birth or adoption leave, or for the care of a seriously ill child, parent or spouse; and

The cost of the credit would be less than $500 million per year.

The advantages of this approach over parental leave mandates are:

It gives employers the flexibility to design a leave package that best fits their employees' needs. The $400/month or $100/week credit is designed to allow the employer to cover the benefits of an absent employee—whether those costs are for continued health coverage, pension or 401k contributions, partial pay, or any other component of a flexible benefits package that an employer may offer. It may also partially defray the cost of temporary replacement employees.

It provides incentives for most small and mid-sized employers, where the need is greatest and the costs are more burdensome, to develop responsible parental leave policies. The Democratic plan excludes companies with under 50 employees in a weak attempt to limit the economic damage to small and mid-sized businesses. The Republican plan would offer positive incentives to all employers—of any size—to provide parental leave.

Instead of mandating hidden payroll taxes on small and mid-sized businesses, it would provide direct economic incentives to encourage the adoption of the responsible parental leave policies that President Bush has long supported.

FAMILY LEAVE TAX CREDIT ACT OF 1992—FACTSHEET

CURRENT LAW

No deduction or credit is available to an employer who provides employees with unpaid leave for childbirth, medical care of children or parents or other serious medical needs. Compensation paid to employees during leave for these purposes is deductible under general tax principles.

REASONS FOR CHANGE

Care for family members with serious mental or physical health problems, including injuries and sickness necessitating hospital, hospice or substantial and continuous medical treatment, present substantial hardships on families. Families are further burdened by the requirements of childbirth and childcare. The increase in the number of two wage-earner families, as well as single parent families, has resulted in pressures to balance these family needs with employment requirements. This balancing has resulted in difficult decisions for both employers and employees.

Employers face significant costs related to extended employee absences. Extended absences could result in substantial lost production and lost business opportunities if the employee is not replaced. These costs are particularly high for small and medium-sized businesses. Economies of scale permit large firms to reduce these costs. Large businesses can train and maintain floating employees, temporarily shift employees to replace absentees or enter into regular arrangements with third parties for trained temporary employees. The costs of extended absences on small and medium size businesses may not be as readily reduced. For small and medium-sized businesses, it is often not economically reasonable to maintain floating employees, to shift employees from other duties or to retrain workers for only a temporary need. Accordingly, small and medium size businesses are more likely to experience severe economic consequences if they do not quickly replace absent workers.

Regardless of a business' ability to mitigate costs, all businesses must balance the legitimate family needs of their employees with the costs of extended absences. Since most businesses cannot economically tolerate unlimited employee absences, employers frequently must place limits on such absences. As a result of these limitations, employees can be placed in the situation of choosing between their employment and the serious medical or health needs of their families.

The proposal's tax incentives encourage small and medium-sized businesses to adopt flexible leave policies related to childbirth, adoption or serious family health problems. The tax incentives do not require that any particular form of flexible leave be adopted. Instead, the proposal allows employers and employees to arrive at a program based on their specific needs, while also providing an offset to the cost of extended employee absences.

EXPLANATION OF PROVISION

The provision provides a 20% refundable tax credit to small or medium-sized employers that provide family leave to their employees. "Family leave" is in connection with the birth of a child; the placement of a child with the employee for adoption or foster care; caring for a child, parent or spouse with a serious physical or mental health condition; or a serious physical or mental health condition that prevents the employee from performing his or her job. All employers with fewer than 500 employees are eligible for the family leave tax credit.

The amount of the credit is 20% of the cash wages that the employer provided to the employee during the period of family leave, or would have been provided to the employee during that period had he or she not taken the leave. The cash wages that would have been provided is based on the average wages for the preceding calendar year (or absent a sufficient period of employment, the preceding four calendar quarters). The maximum amount of wages taken into account for this purpose is $100 for each business day. The maximum period of family leave for which the credit is available shall not exceed 60 business days (12 calendar weeks) in any 12-month period. This results in a maximum available family leave credit of $1,200 per employee per year.

The proceeds of the family leave credit may be used by an employer for any purpose. For example, the proceeds may be contributed to a pool of funds provided by the employer and other employees to defray employee leave costs, paid as partial wage supplements to employees on leave or used to purchase wage continuation insurance or other insurance to cover leave related costs or to provide leave related benefits.

The credit is only available with respect to employees (whether part-time or full-time) who satisfy certain length of service requirements. Under these requirements, the employees must have been employed by the employer for at least 12 months before beginning the family leave and must have performed at least 1,000 hours of service for the employer in the preceding 12 months. Moreover, the credit applies only for the portion of family leave during which the employer reasonably expects that the employee will return to work for the employer.

In order to qualify for the credit, employers must provide employment and benefits protection to employees on family leave. Health benefits must continue during the leave under the terms and conditions that would have applied had the employees remained at work. In addition, all family leave must be provided on a nondiscriminatory basis.

Mr. CRAIG. Mr. President, a tax credit incentive to provide family and medical leave—as opposed to mandating fringe benefits in Federal law—is the approach that is consistent with how we always have approached both employee benefits and tax policy.

Generally speaking, we pass laws that punish to deter bad behavior and enact incentives to encourage good behavior. That is the approach we are taking in introducing the Family Leave Tax Credit Act.

Sixty years ago, there were virtually no employer-provided employee benefits. Congress enacted tax incentives. Today, more than 85 percent of employers provide health insurance. Some 90 percent of employees in medium and large firms have disability leave with at least some income replacement. According to surveys of employee benefits by the U.S. Chamber of Commerce in recent years, 97-99 percent of employers voluntarily provide some type of paid benefits.

It is not fair or an accurate assessment of need, merely to identify how many employers provide the precise benefits provided for in S. 5. To a significant extent, when such benefits are not offered it is because other benefits were negotiated, instead. A Gallup poll from a couple of years ago found that parental leave was the most important benefit to only 1 percent of respondents.

Because employee benefits must be carved from a finite pie of resources the employer has available for compensation, mandating one set of benefits means that employee choice will be overridden and, in some cases, employees will wind up losing other benefits they would have preferred.

I ask unanimous consent to have printed in the RECORD at this point some additional information compiled by the CARE coalition, on what benefits employers already provide and what employees really want.

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

TAX INCENTIVE FOR FAMILY AND MEDICAL LEAVE A POSITIVE APPROACH

WASHINGTON, DC, September 23, 1992.—The Concerned Alliance of Responsible Employers, a coalition representing over one million employers and individuals nationwide, commends President Bush's new initiative to

provide tax incentives for family and medical leave policies.

The Alliance support the rights of employers and employees to decide the work and family benefits which are best suited to their individual and mutual needs, and opposes across-the-board mandates which neglect to take into consideration the individual circumstances of each employer and the particular needs of the individuals in his or her workforce. The President's proposal, which will allow employers to take a refundable tax credit for costs associated with an employee's absence due to the birth, adoption or care of an ill child, spouse or parent, as well as an employee's own illness, recognizes these needs and circumstances. Moreover, this proposal does not mandate that employers adopt a stringent federal benefit policy and permits the private sector to provide the most efficient response to the changing demands and requirements of today's workforce.

In response to the growing number of workers with family responsibilities, employers have instituted a variety of programs to assist workers to meet dual work-family demands. The President's proposal will assist companies to continue and expand these programs, while providing an incentive to those who need financial support to institute this kind of employee benefit.

The members of the Alliance encourage members of Congress to seriously consider this proposal, and look forward to working with them to that end.

STEERING COMMITTEE MEMBERS

American Association of Nurserymen.
American Bakers Association.
American Feed Industry Association.
American Furniture Manufacturers Association.
American Machine Tool Distributors Association.
American Wholesale Marketers Association.
Amway Corp.
Associated Builders and Contractors.
Associated General Contractors.
Citizens for a Sound Economy.
Electronic Industries Association.
Florists' Transworld Delivery.
International Dairy Foods Association.
International Mass Retail Association.
National Association of Chemical Distributors.
National Association of Home Builders.
National Association of Wholesaler-Distributors.
National Automobile Dealers Association.
National Council of Agricultural Employers.
National Federation of Independent Business.
National Fisheries Institute.
National Food Brokers.
National Grocers Association.
National Restaurant Association.
National Roofing Contractors Association.
Printing Industries of America.
Snack Food Association.
Society of American Florists.
Society for Human Resource Management.
United Fresh Fruit and Vegetable Association.
U.S. Business and Industrial Council.
U.S. Chamber of Commerce.
Wholeale Florists & Florist Suppliers of America.

THE CASE AGAINST MANDATES: AMERICAN EMPLOYERS ARE ALREADY PROVIDING AN INCREASED ARRAY OF BENEFITS TO EMPLOYEES

In 1989, employee benefit costs as a percentage of payroll was 37.6 percent, totalling $965 billion, up 8.2 percent from $892 billion in 1988 (US Chamber of Commerce).

Approximately 60 to 70 percent of firms that employ 16 or more workers offer job-guaranteed sick leave. Between 74 and 90 percent of all small to medium firms provide some type of leave to employees which can be used to meet family and medical needs (Small Business Administration).

A survey of 3,460 firms in the wholesale-distribution industry revealed that 65 percent of respondents offer either paid or unpaid leave specifically for the birth, adoption or care of an employee's ill child. Seventy-nine percent of companies with between 100 and 200 employees and eighty-one percent of those with more than 200 employees also offer such a benefit (National Association of Wholesaler-Distributors).

The Bureau of Labor Statistics reported that 90 percent of employees working for medium and large firms are covered by disability leave with some level of income replacement.

Seventy-two percent of respondents to CENSUS of Certified Employee Benefit Specialists said that in the absence of formal leave policies, employers informally accommodate workers who are ill or have seriously ill children.

In 1989, twenty-two percent of medium to large companies provided a child care benefit, including dependent care spending accounts (Hay/Huggins Benefits Report).

Seventy-three percent of respondents to a Lou Harris survey said that their employers already make adequate provisions for both regular and emergency needs of working parents. The vast majority of female respondents to this poll said that their supervisors are "very understanding" when a parent must stay home from work to care for an ill child.

The Roper Organization questioned women in 1989 what they thought would most increase their job satisfaction. Better maternity-paternity leave ranked ninth out of ten, well behind incentive or bonus programs, better health benefits and more rewarding tasks.

THE CASE AGAINST MANDATES: PUBLIC OPINION POLLS REVEAL THAT MANDATED FAMILY AND MEDICAL LEAVE IS NOT A NATIONAL PRIORITY

An ABC News/Washington Post survey conducted in the Spring of 1989 revealed that only three percent of respondents considered making it easier for parents to take time off from work without pay after they've had a child, the most important problem facing the country today.

When asked by the Gallup Organization, only one percent of 1,000 respondents listed parental leave as their most valuable employee benefit. Twice as many respondents didn't even know what their most valuable benefit was!

Penn & Shoen conducted a survey in January 1991 for the Concerned Alliance of Responsible Employers. When asked to choose between the federal government mandating fringe benefits or leaving this decision up to employers and employees, eighty-nine percent of 1,000 respondents said they preferred that employee benefits be decided privately.

Mr. CRAIG. Mr. President, S. 5 represents one of the noble, but most misguided, impulses of legislators: The tendency to legislate by anecdote, to govern according to relatively isolated horrow stories, and to ignore the possibility that, in doing so, the baby can be thrown out with the bathwater.

In saying this, I do not argue that we should ignore each and every workplace that is without family leave benefits. The question is how best to expand the availability of such benefits. Experience shows us that tax incentives obviously have worked when Congress has wanted to expand the universe of available benefits.

The answer also turns on how we judge human nature. A balanced view is that the laws of human nature apply equally to employers and employees. Those of us who believe that individuals will be as good to others as they can be, believe in using the carrot rather than the club to foster good behavior.

I urge my colleagues, if you want to enact the fairest and most balanced bill, if you want a true compromise, if you want a family leave law this year, let's start by looking at our Family Leave Tax Credit Act. Now that sustaining the veto is almost behind us, let's sit down with the leadership from both sides of the aisle and the administration, and work out an effective, nonmandate, compromise.

Having said that, I strongly urge my colleagues to vote to support the President's veto and to become a cosponsor of S. 3265.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized for 2 minutes.

Mr. THURMOND. Mr. President, last year during the consideration of mandated family leave legislation in the Senate, I stated the reasons why I opposed such legislation. I continue to oppose such legislation and rise in support of the recent veto by President Bush.

Over the past few years, the Congress has debated various proposals which would mandate employers to provide several weeks of family and medical leave for the birth or adoption of a child, or for the care of a sick family member. While family and medical leave is desirable and should be encouraged, a Federal mandate in this area—as this legislation would require—does not take into account the varying needs and circumstances of employers and employees.

One employee may want a family leave benefit, while another may prefer to choose a different one from among the wide range of benefits now being offered by many businesses. I am concerned that this legislation could hamper the ability of employees to freely choose benefits which best meet their individual needs.

President Bush has recently put forth the Family Leave Tax Credit Act, which I believe represents a better approach to family leave. Under his proposals, a tax credit would be available for businesses that provide their em-

ployees with 12 weeks of family leave. This imposes no mandate, and I reiterate my opposition to Federal mandates on family leave. Rather, the President's proposal fit in with their particular business and employees. It also provides much-needed flexibility.

It is important to note that the wide offerings of employee benefits in the late 1980's and early 1990's have resulted from the energy, vitality, and flexibility of the private sector. These offerings demonstrate the ability of American business to respond to a changing market and willingness to accommodate the needs of a diverse work force.

Businesses should continue to have the freedom to respond to the market, and not have mandates for benefits. From the very formative years of this Nation, the free market has played a vital role in the private sector and employer/employee relations. Let us continue to build on this freedom.

Recently, the September 17, 1992 edition of the Augusta Chronicle included an editorial outlining a $25 million private sector initiative to pool resources to help finance day care and elderly care in 44 cities. As the editorial notes, private sector initiatives such as this one, represent a far superior approach to family leave, than having Federal mandates. I ask unanimous consent that a copy of the editorial appear in the RECORD immediately following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1).

Mr. THURMOND. Mr. President, in short, we do not need an additional Federal mandate such as S. 5 would impose. Accordingly, I intend to vote to sustain the Presidential veto of this bill.

EXHIBIT 1

[From the Augusta Chronicle, Sept. 17, 1992]

VETO "FAMILY LEAVE"

When President Bush vetoed the family leave bill two years ago he explained that companies which could afford such policies were already implementing them, and those that couldn't shouldn't be forced to by government. The resulting closures and job losses, he said, would hurt more families than it would help.

The President did, however, use his "bully-pulpit" to urge business and industry to ease their employees' family burdens whenever possible.

Last week a key segment of corporate America answered the call—and none too soon. The Democrat-controlled Congress had just passed a new leave-bill, designed to embarrass Bush on the "family values" issue.

The measure, very similar to the one he successfully vetoed in 1990, required high-paid workers—the only ones who can afford it—be allowed to take up to 12 weeks of unpaid leave to care for newborns or ailing parents.

This contrasts with the $25 million project announced by 11 of the nation's top companies and more than 100 small- and medium-sized businesses. They will pool their resources to help finance day care and elderly care in 44 cities.

The companies' sensitivity to the changing work force is far superior in scope to the legislation on the President's desk. He can cite their example as one which should be expanded or emulated throughout the private sector, as it becomes feasible. If the government interferes now, these innovative private initiatives will come to a screeching halt.

Mandates require conformity, not innovation. Besides, the government should stay clear of problems that are already being dealt with elsewhere.

Bush was right to veto family-leave the first time around, and given the progress under way, he'll be even more right to veto it the second time.

Mr. DODD. Mr. President, I yield 3 minutes to the distinguished Senator from Missouri.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Missouri for 3 minutes.

Mr. BOND. I thank my colleague from Connecticut. I believe for too long Government has ignored the importance of families and in some instances adopted policies more likely to break them up. That is why since I have been in this body, listening to the people of Missouri and working with my colleagues, I have successfully pushed for latchkey care for elementary schoolchildren of working parents, a family unification program to keep families together when they otherwise would be broken apart because of a lack of adequate housing, and right today we are working to get a parents-teachers bill through that will help parents become better participants in their child's education.

But while all these efforts are important, I believe the single most significant step that we can take to help all families in America is to try to reinstill individual and family responsibility.

And to do that, we as a society need to make family obligation something we encourage rather than discourage. That is why I believe we should enact the Family and Medical Leave Act over the President's veto. As a society, we should never force a parent to choose between a sick child and his or her job. We should never force a parent to choose between caring for an aged parent and a job, and we should never force a mother to leave her newborn baby in order to stay employed.

That is why I worked with the Senator from Connecticut to develop the compromise before us today, which I believe is reasonable. That is why I will continue to urge my colleagues to support this bill over the President's objection.

Over these past few years we have heard many people discussing the family, family values and how we must strengthen the family. As one who believes that for far too long Government has ignored the importance of families, or worse yet created policies more likely to break them up than keep them together, I welcome this discussion.

Many of the problems facing society today can be attributed to the weakening of the American family. Drugs, violence, crime, declining educational performance and poverty can be traced back to an empty childhood or a shattered family. There is a great need to strengthen the American family by reinforcing the bond and sense of responsibility between parents and children.

Of all the efforts and initiatives that I have been involved in since coming to the Senate, none have been more important to me than my efforts in the area of family preservation and children's issues.

Thus for the past several years, working with organizations in Missouri as well as other interested individuals I have been actively pushing a series of reforms and new policies designed for the sole purpose of keeping families together.

I believe that programs to help children and families are long-term investments by today's generation that will brighten the future of our Nation.

I believe that our solutions should be preventive rather than reactive. We must address the root causes of problems rather than simply applying Band-Aids to deep cuts.

America's children hold the key to our long-term prosperity. They will lead America in the years to come and affect the progress of our country. The motivation and the capacity to learn start from birth and need constant attention. Parental involvement in the education of their children is the single most important factor in ensuring long-term academic success for youngsters. Parents are their children's first and most influential teachers. As Governor, I established Missouri's Statewide Parents As Teachers Program, making Missouri the first in the Nation to offer a comprehensive parent education/early childhood program. It is designed to assist parents in fostering their children's language, cognitive and motor development skills, and to provide advice to parents on what to expect at each stage of a child's development. Because of the program's success, 35 other States have used the Missouri model to develop their own programs.

Recently I worked with the St. Louis Salvation Army to create a new, innovative housing and counseling center to address the needs of homeless families with children to get them out of the emergency shelters and into a program to rehabilitate their lives.

With Senator MIKULSKI I created the new family unification program and got it up and running. This will help keep kids out of foster care who would otherwise be split up because of housing deficiencies and reunite other families already split up because they lacked affordable housing. This is an extremely important program, and I am proud to be associated with it.

But while all these efforts are important I believe the single most important step we can take to help all families in America is to try to reinstill individual and family responsibility. And to do that, we as a society need to make family obligation something we encourage rather than discourage. That is why I believe we should enact the Family and Medical Leave Act over the President's veto.

As a society we should never force a parent to choose between a sick child and his or her job.

We should never force a parent to choose between caring for an aged parent and a job.

And we should never force a mother to leave her newborn days after its birth in order to stay employed.

That is why I developed the compromise before us today, which I believe is reasonable; that is why I will continue to urge my colleagues to support this bill over the President's objections.

Mr. President, some feel this issue is about mandates. I believe it is simply job protection at a time when it is needed most in a family. As a society we must begin to place a higher value on parenting and family obligation.

The workplace of the nineties cannot live by the rules of the 1950's. The fact is that more mothers of young children, even infants, work outside the home than ever before. In 1988, married women with young children comprised the majority of new entrants in to the labor force. More than half of women with young infants return to work outside the home within a year of their child's birth. And contrary to what some may have you believe, it is not necessarily out of choice—it simply takes two incomes to pay the bills.

To prove my point: We know that more than two-thirds of women in the work force today are either single parents or have husbands who earn less than $18,000 per year. The fact is a family of three or four cannot live comfortably on under $18,000 per year in most parts of this country. Surveys show us that many married couples would choose to have one person stay home full time if money were not an object, but it is.

So what happens when a family faces an emergency, an illness, or unexpected change to adopt, but both partners work? Well, they had better hope they have an understanding employer.

A 1990 Bureau of Labor Statistics found that only 37 percent of female employees have any type of maternity leave. And of the Fortune 1,500 companies, where one might expect the best coverage of workers, only half offered parental leave beyond the standard 6-week maternity as disability period.

Paternity leave is extremely scarce. Only 18 percent of fathers at medium and large firms are covered by unpaid paternity leave.

According to the chamber of commerce, 82 percent of employers provide no leave to care for sick children.

And if an employee is sick himself or herself, there is a good chance that he or she works for a company that does not even provide sick leave.

That is why this bill is vital. During that unforeseen family emergency, we want our Nation's parents to think about their family's well-being, and not worry about whether their job will be there when their youngster gets out of the hospital.

Mr. President, I have thought long and hard about these issues, and I believe the compromise developed with Senator DODD last year, which is what the President has rejected, is important, necessary, and should be signed into law.

We have made improvements to the bill in response to legitimate business concerns about the potential for abuse of leave. In addition, we have told the employee that he or she bears some responsibility in notifying employers of plans for leave, and must also provide documentation to ensure that the leave is necessary.

As a society we should never force a parent to choose between a sick child and his or her job.

We should never force a parent to choose between caring for an aged parent and a job.

We should never force a mother to leave her newborn days after its birth in order to stay employed.

And by all means, if we believe in strengthening the family, we should encourage a policy of family obligation when at all possible.

Mr. President, I urge my colleagues to enact this measure over the President's veto.

Mr. KENNEDY. Mr. President, last week, the Yandle family came to Washington to urge President Bush not to veto the Family and Medical Leave Act. Their story illustrates in a poignant and compelling way what is wrong with the current practice, in which employees who need time off from work to deal with family emergencies can be fired from their jobs.

The Yandles live in Georgia with their three children. In 1987, 11-year-old Dixie was diagnosed with cancer. Her leg was amputated 2 inches below the pelvis, and she began undergoing chemotherapy treatments.

Both her parents took time from their jobs to care for their daughter. Mrs. Yandle left her job after her manager accused her of lying about her daughter's cancer and her need for time off.

Mr. Yandle worked as a salesperson for a large Atlanta car dealership. While his daughter was in the hospital, he tried to balance his work and his family responsibilities. One evening, exhausted by the strain, he collapsed at his daughter's bedside and was hospitalized in intensive care for 3 days.

Mr. Yandle was fired from his job. Even though he had continued to perform as one of the top three salespeople, his employer decided that was not good enough.

It took Mr. Yandle more than a year to find another job, because his former employer was giving him negative references. Rather than explaining that Mr. Yandle's daughter had been fighting cancer, rather than letting prospective employers know that Mr. Yandle had continued to outperform most of his coworkers during that difficult time, the employer said only that Mr. Yandle had lost his job because he put his family first.

When he finally found another job, he was paid only 40 percent of what he had previously earned. The family exhausted their savings, and managed to hold onto their home only because their adult children moved back and shared common expenses.

The Yandles symbolize in human terms what this debate is all about. Last week, they came to Washington to put flesh and blood on this legislative debate. They urged President Bush to sign the Family and Medical Leave Act. But President Bush turned thumbs down on the Yandle family, thumbs down on millions of other working families, thumbs down on family leave.

This bill is no threat to small business and no threat to jobs. It exempts businesses with 50 employees or less—95 percent of all firms. The leave is unpaid, so there's no significant cost to business. It applies only to full time workers who have been on the job for at least 1 year.

It exempts key employees, requires doctors' certifications to prove the need for leave, and requires workers to repay health insurance premiums if they choose to leave their job for good. It requires employees to provide notice for foreseeable leaves, and to schedule treatments in a way that does not unduly disrupt business operations.

When a medical crisis strikes, when a new child is born or a family member is seriously ill, workers need leave. That is a fact. When the chips are down, President Bush sides with business and Congress sides with families.

All other industrialized nations provide reasonable, job-guaranteed leave as good social policy and good economic policy.

Studies demonstrate that family leave costs less than hiring and training replacement workers. In this day and age, no working parent should be forced to choose between the job they need and the child they love.

President Bush is attempting to hide his veto behind an ineffective, expensive, 11th-hour tax credit. Congress sees through this sham, and so does the public.

The President's proposal fails to provide the basic job guarantee that lies at the heart of the Family and Medical

Leave Act. While a tax credit might induce more companies to adopt family leave, it still keeps workers subject to the whims of their employers. It will do nothing to encourage companies with more than 500 employees to adopt a leave policy—yet 41 percent of all women work for businesses larger than that.

The administration's tax credit would also be available only where an employee takes a single, uninterrupted period of leave during the year. It excludes workers who need intermittent leave—such as 1 day a week for ongoing medical care. If two family emergencies hit in a year, the family is out of luck. This will place an especially heavy burden on disabled persons, who often need ongoing medical treatment.

Even if the employer does not pay the worker taking leave or hire a replacement, the tax credit is still available, based on the full amount the employee would have earned if no leave was taken. That is a ridiculous new direction in tax policy—giving tax breaks to businesses for money they do not even spend.

In addition, under the administration's proposal, there is no requirement for the employer to give workers back their old job or an equivalent position. A firm can comply with the Bush bill by giving employees any job when they return—even one with lower pay and less responsibility. Some incentive.

The President's proposal is an expensive, multibillion-dollar tax break for business. Leave it to this administration to turn a sensible family proposal into a tax break for business.

Between 1980 and 1992, the share of taxes paid by business have dropped by nearly one-third. After struggling through a decade of corporate tax breaks, the last thing working Americans need now is for the President to force them to pay for yet another giveaway for business.

In 1988, candidate George Bush said:

> I do not support giveaways of taxpayer dollars to get business to recognize what it already knows: that it must provide assistance for more and better child care.

What Mr. Bush said in 1988 about child care applies in 1992 to family leave.

If President Bush genuinely cared about the needs of working Americans, if he believed that his tax credit would respond to those needs, he would not have waited silently through 7 years of debate, 17 hearings, 11 markups, 6 major bipartisan compromises, and 1 previous veto fight before sending his alternative to Congress. He would not have stood on the sidelines, refusing to meet with family leave advocates and leading congressional sponsors, until the closing days of this Congress.

Working Americans have waited too long for this basic right. This bill responds in a fair and balanced way to their needs, and the veto should be overridden.

We know that Bill Clinton would sign it if he was now in the White House—and we know he will sign in January if our effort fails today. So family leave is coming soon—the sooner the better.

Mr. HATCH. I will yield 1 minute to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, as one Senator, I wish to compliment Senator HATCH for his statement, and compliment the President for vetoing a bill that is another mandate on business. I happen to agree with the goals enunciated by my friend, Senator DODD from Connecticut. I just disagree with the method. The method is saying: Business, you have to do this, and if you do not, you have to pay fines, and pay back wages, once, twice, three times, and then you have to pay attorney's fees and a lot of legal expenses—that is enormously expensive.

I hope my colleagues look at the enforcement section. We are telling business that you have to do it. We do not disagree with the concept of parental leave as an employer. I know the Presiding Officer is also an employer. Our company provides paid leave, paid maternity leave. We provide vacations, flexible time. If one is ill, we allow them to be off. We take care of our employees. We do not need the Federal Government coming in with this dictatorial stance. Wages and benefits should be negotiated between employer and employees, not dictated by the Federal Government. What may work in some States, or what may work in some areas, may not to be the case with a lot of private providers. So I urge my colleagues to allow employers and employees to negotiate and not dictate with a Federal heavyhanded mandate.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I yield 2 minutes to the distinguished Senator from Tennessee.

Mr. GORE. Mr. President, I want to compliment the Senator from Connecticut, [Mr. DODD] for his outstanding leadership on this issue over a long period of time. He has educated us all about the ways to solve this very serious problem, and those who have worked with him are owed the gratitude of all of us here and the American people.

I also want to compliment the Republican Senators who have shown courage in supporting this legislation. Though there is sharp division on the other side of the aisle, there are a good number of Republican Senators who have recognized that partisanship ought to end when we have a matter as important as the family leave bill on the floor. Indeed, as the evidence has shown, overwhelmingly, this ends up saving money for the country and saving money for those businesses that implement this policy. The alternative with all due respect, is nothing more than a political fig leaf. We all understand that. In 1988, when the subject of tax credits to encourage family leave policies cam up, here is what George Bush said in Albuquerque, NM:

> Employers have a major role in helping parents find needed child care, but I do not support giveaways of taxpayer dollars to get business to recognize what it already knows.

Well, of course, when the political heat is felt in the White House, there is panic and a scrambling for some kind of alternative that can serve as a tiny fig leaf, but that is all this alternative is. You get a tax credit under their proposal. If you provide 1 day of leave for an employee that might need several weeks, 1 day would qualify for the tax credit they are talking about as an alternative. When it comes to family leave, President Bush is saying, read my lipservice to family values. He has vetoed this bill in an act which completely destroys all the impression that President Bush and Vice President QUAYLE attempted to create with the incessant rhetoric about family values.

Let me tell you a story that I learned personally when my wife and I were in Johns Hopkins Hospital during our son's need for medical treatment. A little boy next to our son's bed in the pediatric unit was named Brett Philpott. His father, Mitch Philpott lives in Marietta, GA. Before he lost his home, he used to live in a suburb of Atlanta with his wife and other children. Brett was diagnosed at birth with a rare condition which at first affected his eyesight and then led to constant seizures. The medical problems multiplied, and in order to receive specialty care, they came to Johns Hopkins.

We got to know Mitch Philpott and his family extremely well. For 30 days and nights in Johns Hopkins, we held hands with them, we talked with them, we prayed with them. We got to know them very well.

Mr. President, Mitch Philpott was fired from his job because he could not get 6 weeks of leave to stay with his son and family, while the operations were underway. His wife lost her job. She requested leave to be there during the 6 weeks prior to Christmas. The company told her you cannot have it. You will have to resign.

They lost their home. Tragically, as so frequently happens in cases like this, the stress had other impacts on the family.

I have kept in touch with Mitch Philpott over these past 3 years. He said just yesterday that what makes him happiest in life is to come home and to hold his son. But the financial burdens have created a nightmare for this family.

Anybody who wants to know why this law is needed, just come with me down to a children's hospital to a pediatric critical care ward and spend 1 day there talking to the families who are in the aisles and in the patient care

rooms trying to figure out how they can pay their bills after their health insurance has been canceled and they have been fired from their jobs because they need time off.

This is not a partisan issue. The President is isolated on this issue.

I ask my colleagues to vote to override the veto of the family leave bill.

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, the managers on both sides have indicated a number of Senators still wish to speak, and according to their request, I now ask unanimous consent that the debate be extended for 10 minutes, to be equally divided between the two sides.

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that I also be permitted to use my leader time to make a statement.

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

Who yields time?

Mr. HATCH. Mr. President, I will yield 2 minutes to the distinguished Senator from Iowa who has an alternative.

Mrs. KASSEBAUM. Mr. President, when this legislation came before us a year ago, it presented me with a difficult choice. No one denies the importance of allowing workers time off to cope with family emergencies or the birth of a new child.

I sympathize deeply with those forced into the difficult position of having to decide between their families and their jobs. Yet at the same time, I am troubled by the larger unforeseen and unintended consequences of Federal involvement of this kind.

To meet the needs of our changing work force, many businesses have already responded with comprehensive leave programs. Others have approached the problem on a case-by-case basis.

Unfortunately, not all employers have recognized the increasing demands on working parents, the commitment involved in caring for a newborn, or the pressures workers face when an illness strikes at home.

Does this mean that Congress must mandate a response? Should we require all employers with 50 or more workers to offer no less than 12 weeks of family and medical leave? I have wrestled with this issue for the last three Congresses, and each time I have reached the same conclusion: I cannot support Government-mandated leave.

Until now, Congress has wisely refrained from interfering with the bargaining relationship—the give-and-take between employer and employee—however uneven at times it may be. This has allowed maximum flexibility for wage and benefit packages to be shaped according to the size and fiscal constraints of businesses and the needs and desires of workers.

The great diversity of business needs in this country makes it very difficult for the Federal Government to devise a single plan that addresses the needs of all workers, without adversely affecting the ability of employers to meet those needs.

Consider also the cost. Estimates have varied from a low of $5.30 per employee per year, to a total cost of almost $8 billion annually. What this illustrates is that, in fact, we do not really know the true cost of this legislation. Even if the lowest estimate is accurate, clearly this cost will vary depending upon such factors as the size or geographic location of a business.

For example, a company of 51 employees located in rural western Kansas will have far greater difficulty in absorbing the costs associated with absent workers than, say, a company of 5,000 in Wichita or Kansas City. Yet, it is precisely these smaller companies that create the greatest number of new jobs and at this time can ill afford additional burdens.

When we talk about costs, we are not just talking about a company's bottom line. Mandating a new benefit will either result in diminishing current benefits for workers or reducing their current wages. The same dollar will be spent on workers, only the pie will be sliced along different lines.

We cannot avoid the fact that when we mandate a benefit, it will increase benefit costs, which in turn will have a direct impact on the labor market, either curbing wage increases, discouraging the hiring of new workers, or even accelerating layoffs in hard times.

Mr. President, while the ultimate effect may be minimal, I am deeply concerned about the cumulative impact of this and other legislation which add new costs and liabilities to every job. If we continue to create new burdens linked to employment, as this bill will do, businesses will come to view their employees as liabilities rather than as assets.

Sadly, this is already taking place. Like it or not, it is becoming standard practice for companies to reduce their staffs to the bare minimum necessary to remain profitable. "There is not an informed employer in America who wants to create an employment relationship," one expert stated recently to the Washington Post. "Nobody wants employees."

We need to start asking why this is happening. Many of my colleagues have come to the floor to decry rising levels of unemployment, while turning a blind eye when it comes to legislation like this which may well influence the decision of a company to hire new employees.

Small- and medium-sized businesses have always been the primary source of new jobs in our economy. Recently, however, this sector's job growth has dropped, at least in part due to the rising costs associated with hiring.

On top of payroll taxes and workers compensation, health care insurance is fast becoming an additional, de facto employment tax on companies. Until we face the health care crisis head on, adding new mandates will only further discourage the creation of new jobs.

Mr. President, the efforts of Senator BOND and others to fashion a workable bill underscore the difficulties inherent to this legislation. For every new requirement, an enforcement mechanism must be implemented, along with the attendant regulations and necessary paperwork, further adding to the regulatory burdens of small- and medium-sized businesses.

A colleague of ours, former Senator George McGovern, discovered first hand just what obstacles the small businessman must face. His small hotel and restaurant were driven into bankruptcy. His experience led him to conclude that:

> In short, "one-size-fits-all" rules for business ignore the reality of the marketplace. And setting thresholds for regulatory guidelines at artificial levels—for example, 50 employees or more, $500,000 in sales—takes no account of other realities, such as profit margins, labor-intensive vs. capital-intensive businesses, and local market economies.

It was his regret that he did not have this firsthand experience of the difficulties business people face every day when he served in public office. "That knowledge," he said, "would have made me a better U.S. Senator."

Mr. President, much has been said in this debate about family values. Leave to care for a family is good for business, and it certainly is good for a family. None of us would deny that. A number of employers already provide those benefits and more should. But I have never believed the Federal Government can legislate benefits to meet every need, particularly through mandates of this kind.

What we can do is create an atmosphere conducive to economic growth and the creation of new jobs. Health care reform will be an important step. But employers must also have the flexibility to offer a variety of benefits, tailored to meet the diverse needs of their workers. This might include provisions for child care, elder care, flexible work scheduling, job-sharing, or any number of programs designed to meet the unique needs of each workplace.

I am especially concerned that the growing trend toward more flexible benefit programs will be constrained if Congress mandates certain benefits, to the detriment of those employees who do not need or desire those benefits.

While I recognize the important need this bill seeks to address, I cannot sup-

port it. We cannot afford, at this juncture, the additional burdens—both in terms of cost and in the loss of flexibility—that this bill would mandate.

Mr. CRAIG. Mr. President, throughout the debate this morning, we have heard a statement echo here in the Chamber "it is a tax break for business. It is only a tax break for business."

Let me remind the Senate that this Senate and this Congress has provided in public law tax breaks for health insurance deductions, and that is for business and people, and employees, tax breaks for life insurance, that is people, targeted job tax credits, that is people, continuing education, that is people, and that is business, legal assistance, moving expenses, flexible spending accounts for dependent care, child care. Nobody said that was just for business.

It is good political rhetoric, but the facts are we do provide this as incentive and we have historically for people, because we recognize that if you create a positive environment, positive things happen out there in the workplace. That is what is accomplished by the President's bill and that is what we recognize. You can play the rhetorical game if you wish, but you better check your voting record, because you will find you provided tax breaks for business to create an environment for positive things to happen for the employee and the employer.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DODD. Mr. President, I yield 2 minutes to the distinguished Senator from Ohio [Mr. METZENBAUM].

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized for 2 minutes.

Mr. METZENBAUM. Mr. President, I thank my colleague from Connecticut.

Mr. President, the President talks about family values, but as the Washington Post stated last week, he has shown a pathetic level of commitment to the needs of America's working families. President Bush vetoed this bill once before in 1990. Now he has vetoed it again. Workers should not be forced to choose between their job and their family, but that is just where George Bush has left them.

It is true the President sent up his own family leave proposal but that proposal would allow an employer to claim a tax credit of up to $1,200 per employee even if the employer had no expenses whatsoever related to the unpaid leave provided for employees, a great way to balance the budget, give away more money in tax credits to employers.

Plain and simple, that will mean employers would be free to profit from an employee's unpaid leave. The President's proposal does not just allow that result, it actually encourages it. The President's idea of helping America's working families is to let his corporate friends loot the Federal Treasury at the expense of the American taxpayers.

That is not leadership. It is nothing more than a cynical and transparent effort to hoodwink the American people. I see through it. My colleagues see through it. I believe the American people will see through it. And over 70 percent of the Americans support the bill the President vetoed. I urge my colleagues to override that veto.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. I am happy to see the distinguished Senator from Tennessee here [Mr. GORE], and I expected to see him here today, and I wish him well. I especially wish him that he might be able to spend a number of future years with us here in the Senate. On the other hand, he makes some good points on this, and so does Senator DODD.

But I think if the President would be listened to, he has a bill that can lead to a family leave bill being enacted this year. Not only would it be enacted but instead of only 300,000 businesses being covered which is what this bill does, you would have 6 million businesses covered and they would be the businesses where the people who need there are most likely to be working. Instead of having only 33.4 million workers covered, as this bill will do by mandating on the backs of American business these obligations, you would have 48.7 million people covered by the President's program.

Is this pure politics or a true effort to pass a family leave bill? The Democrats have held this bill for 10 months. They passed it 10 months ago in the House but they held it for 10 months until they actually conferenced S. 5 in August.

Although our friends on the other side clearly control the legislative agenda in both Houses of Congress, I think one has to question why all sudden in the last few days of this Congress it is brought up now rather than before.

Mr. President, I think it is important to look at these charts and realize that the approach of the President of the United States will work without the mandates.

One of the more interesting articles over the last week is by Charles Krauthammer, called "Family Leave Flimflam."

Mr. President, I ask unanimous consent that that article and an article by George Will called "Lessons From California" be printed in the RECORD.

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

[From the Washington Post, Sept. 18, 1992]

FAMILY LEAVE FLIMFLAM

(By Charles Krauthammer)

In the old days when government wanted to do something nice for the people, it doled out the money. Health care for the poor? Government would pay for Medicaid. In the heyday of the Great Society, expansive social feeling coincided with explosive economic growth to produce government largess on a scale unseen before or since. The redutio ad absurdum of this approach was George McGovern's 1972 campaign promise of a $1,000 "demogrant" to every breathing American, a simple presentation of cash from a bountiful government to a grateful citizenry.

Then came Reagan, tax cuts and fantastic debt. Government is broke. Giveaways are not obsolete—Congress and the president have just granted 10.5 billion borrowed dollars to hurricane relief—but except for emergencies, government has grown wary of dipping into a treasury already $4 trillion in debt.

Yet the politician's determination to continue giving is unswerving. No money? No problem. Nowadays politicians give and make someone else pay.

A perfect example is the family-leave bill just passed by Congress. The bill would mandate that businesses with more than 50 employees provide up to 12 weeks per year of leave per employee (unpaid, but with health care benefits and a job guaranteed) for reasons of family or personal illness, birth or adoption.

Family leave is a good idea. It spares workers the cruel choice between a loved one and a job. A generous country should have family leave. And a generous country should pay for it. How? Not by adding yet another regulatory burden on American business already struggling to survive in a highly competitive global economy, but by socializing the cost. Have government pay for it. Indeed, among our competitors that do have family leave, the costs are heavily subsidized by the state.

The Bush administration in a late counterproposal offered tax subsidies to reimburse businesses that voluntarily offer family leave. Make it mandatory, and it's the right idea: Government mandates, government pays.

Politicians of both parties are constantly sounding off about America's growing lack of competitiveness. Yet they heap mandate upon uncompensated mandate on business, adding relentlessly to the cost of production, inevitably jeopardizing the capacity of American business to complete.

Take, for example, the "play-or-pay" health care plan proposed by Senate Democrats and endorsed by Clinton. Guess who pays. "Play-or-pay" says to small business: You either provide health insurance for your employees, or you pay the government an additional payroll tax estimated by the OMB at 7 percent to 9 percent (and we will provide the health insurance.)

Now, business already has a 6.2 percent payroll tax for social security and 1.5 percent for Medicare. Adding another 7 percent to 9 percent tax is only going to make it harder for American business to meet foreign competition.

Yet in the same spirit Clinton proposes another tax on business. His worker retraining proposal mandates that a business must either have its own retraining program or pay another payroll tax (1.5 percent) to finance a government training program. More play-or-pay.

Yes, we need worker retraining, particularly in a world of free trade with its inevitable social dislocations. But adding the cost to business is simply a way to kill the golden goose that generates economic growth.

Payroll taxes, which raise the cost of labor, are a particularly bad idea. They distort the employer's choice when deciding whether to hire a worker or buy a machine. Distorted economic choices in general make for inefficiency and slower economic growth. This distortion, moreover, biases the choice in a particular direction: against labor. And that has an even more baleful consequence: joblessness. The more expensive an employee is for a given amount of output, the less likely he is to be hired.

Do we want family leave, universal health insurance, worker retraining? Then let's all pay for it. Socialize the cost. First, because it is more honest. There is no free lunch. We are going to have to pay for these social goods one way or the other. Fobbing them off on business does not eliminate the cost. It only hides it.

Socializing the cost is also more rational. For example: We could, as Clinton proposes, charge all these goodies to American business. Alternatively, government could pay for them directly, financing them with, say, an energy tax or a national sales tax.

At least now we can make judgments. Doing it the first way means a decrease in international competitiveness and an increase in joblessness. Doing it the second way means a decrease in consumption spread through the general population. We can now choose our poisons.

In my view, equity argues for depressing everyone's standard of living somewhat rather than visiting extreme hardship on the unlucky jobless (while the rest of us carry on unscathed). There are, of course, other ways to weigh the tradeoffs. But the only way we will see the trade-offs at all and make rational choices between them is if the costs of these social benefits are acknowledged openly.

We have some distance to go in finishing the edifice of the welfare state. Unfortunately, it will cost. The only people it suits to hide the cost are the politicians. It allows them to say to the great "forgotten" middle class: I bring you new and wondrous things. And, by the way, for you: no new taxes.

[From the Washington Post]

LESSONS FROM CALIFORNIA

(By George F. Will)

LOS ANGELES—"Dear Governor Wilson: If no one likes you then no one will vote for you. The teachers are going to go on strike. You better shape up or bye-bye you're out of there."

California's continuing crisis is America's most portentous political story. Pete Wilson's gritty response to it is a stunning contrast to the evasions of the presidential candidates concerning the nation's comparable crisis. An introduction to California's crisis, and Wilson's response, is that "you better shape up" letter to him. It is from a third-grader.

Sacks of such letters have been produced in a propaganda exercise the Los Angeles teachers' union is pleased to call a "civics lesson." The union's leader says the students "feel cheated" by the state budget. Sure, they probably talk of little else.

The education lobby's sense of limitless entitlement is apparent in the shrill denunciations of the budget that closed a $10.7 billion gap without tax increases. It reduced the level of benefits—for the elderly, blind, disabled, poor, street repair, bridge maintenance and much else—but it maintains the per pupil spending level while accommodating this year's enrollment growth of more than 200,000—more students than are in New Hampshire's or Hawaii's schools.

Actually, total state spending, counting the dedicated revenues of the "special funds" (for highways etc,) will increase by $430 million. But the general fund has been cut as Wilson faces the fact that demography is destiny.

California's "dependency ratio"—the ration of population under 18 and over 64 to the working (18-64) group—is rising here while falling in the rest of the nation. Hence there is an ominously changing ratio of taxpayers to "tax receivers," defined as participants in the state's costliest programs, such as students, prisoners, welfare and medical beneficiaries. These programs take 91 percent of the general fund.

The number of tax receivers is growing faster than the number of taxpayers. Indeed, there recently has been a net migration from the state of high-earning (and highly taxed) people age 45 to 64.

During this decade, kindergarten through 12th grade enrollments may increase three times faster than the working age population. The taxpayers already are burdened. The corporate tax burden is the nation's fifth highest. The income tax—the nation's most steeply progressive—is the eighth highest. State and local sales taxes reach 8.5 percent in some counties. In 1991, Wilson cooperated—reluctantly—in enactment of the largest tax increase in the history of any state.

So what are public employees' unions and other advocates for tax receivers advocating? Proposition 167. It is on the November ballot and would increase taxes on businesses and affluent individuals.

Wilson's better idea, Proposition 165, would give governors power to make certain budget cuts when (as in 16 of the past 20 years) the budget is late. And it would cut all welfare payments by 10 percent, and cut by 15 percent benefits going to those who have been receiving benefits through Aid to Families with Dependent Children for more than six months.

California's welfare caseload, growing at a rate four times faster even than the state's burgeoning population, currently has average monthly payments ($663) about 83 percent higher than the national average ($361). When other non-cash benefits are added, a welfare recipient who today takes a job paying $1,200 a month can actually be $150 worse off than he would be on welfare.

In 1980 there were 6.9 taxpayers for every recipient of AFDC. If current trends continue, by the year 2000 the ratio will be 2.9 to one. To combat the trends, Proposition 165 would discourage "welfare shopping." About 36 percent of new welfare recipients come from the 10 states with the lowest benefits. Families moving to California would receive, for the first 12 months, welfare grants no larger than those paid in the state they came from.

California's welfare grants are, Wilson says, 3½ times those of Texas, double those of neighboring Arizona, double the average of the 10 most populous states. Even with the cuts made by the new "draconian" budget, California's grants are higher than those of all states, but Alaska, Hawaii and Vermont. If Proposition 165 is enacted, the grants will still be 60 percent larger than those of the 10 most populous states.

In the 1980s, California experienced an 83 percent increase in teenage pregnancies. Half the women now on welfare first became pregnant as teenagers. Proposition 165 aims to modify behavior. Teenage parents on welfare would get an additional $50 a month as long as they are progressing through high school but would lose $50—a $100 incentive—if they drop out.

And grants will not be increased for additional children born to mothers already on welfare. Wilson says this idea comes from a black legislator from Camden, N.J., who said it was just elemental fairness to working parents who are too hard-pressed to start or enlarge families. Furthermore, under Proposition 165, after six months on welfare the grant would be reduced for families with an adult able to work.

California's crisis is taking a terrible toll on many people, but it also is eliciting something simply not seen nowadays in Washington—hard choices about grim facts. Why? Because Wilson's back is to a useful wall: He is constitutionally required to balance the budget. And because Wilson understands the necessity of fighting arrogant lobbies that conscript elementary school pupils into political battles.

Mr. HATCH. Charles Krauthammer says this, and I think it is an interesting statement.

Family leave is a good idea. It spares workers the cruel choice between a loved one and a job. A generous country should have family leave.

I think we all agree with that—

And a generous country should pay for it. How? Not by adding yet another regulatory burden on American business—

Which we pointed out in this first chart here by expanding the mandated part of employee benefits and taking away from the negotiated part that employees have the flexibility to negotiate for themselves.

He says:

How? Not by adding yet another regulatory burden on American business already struggling to survive in a highly competitive global economy, but by socializing the cost. Have government pay for it. Indeed, among our competitors that do have family leave, the costs are heavily subsidized by the state.

What he is saying is just be honest about it and have the Government do it.

He goes on to say:

The Bush administration in a late counterproposal offered tax subsidies to reimburse businesses that voluntarily offer family leave. Make it mandatory, and it's the right idea: Government mandates, government pays.

Policitians of both parties are constantly sounding off about America's growing lack of competitiveness. Yet they heap mandate upon uncompensated mandate on business, adding relentlessly to the cost of production, inevitably jeopardizing the capacity of American business to compete.

It is a wonderful article, and he calls it the way it should be called. The President said let us not mandate it on the backs of business, let us cover the wide variety of people, 6 million businesses compared to 100,000 or 48.7 million people compared to only 33.4 million under this bill, and let us do it in the best way we can without forcing people to choose among competing fringe benefit programs.

In another article by George Will that appeared in the Washington Post this morning—it is an excellent article—he basically makes the point that there is a cost to all of these mandates and that cost right now is sinking the economy. You add this cost on the backs of business and it just helps sink the economy more. It is a very, very interesting article about California and how it is sinking, because they have mandated benefits until they are getting blue in the face.

Let us not forget that 95 percent of all businesses are not covered by this bill; 95 percent, one-half of all American workers, are not covered by this bill. And in most cases they are the people who, if you really want family or medical leave, would be the ones you would want covered. The reason they have not is they know that the cost would sink small business even more than they are, especially the small businesses of 50 to 200 employees. And that is where the guts of this country really happens to be.

Mr. President, this is an important debate. Why it comes up with just a few days left in the Congress, I think we all have to make our own minds up as to that.

But there is no doubt in my mind that this is a big political game right now. Knowing that they cannot pass this bill, knowing that the veto will be sustained in the House and bringing it up, in spite of that, when the President has an alternative that would cover 6 million businesses versus 300,000, 48.7 million people versus 33.4 million—and these 48.7 million people are people who really deserve and need the coverage—and does it without a mandate, without shrinking the economy, without having us have some of the problems that some of these major States are having because they have been too generous in mandating on the backs of business that which should not be mandated.

That is what they are going to do here if this bill could possibly make it through, which it will not. The fact is, it will pass here in the Senate today but it will not pass through the House of Representatives.

Mr. President, I yield the floor.

Mr. DODD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DODD. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Four minutes and fifteen seconds remaining.

Mr. DODD. Mr. President, let me just briefly identify first of all to my distinguished colleague from Utah that Senator CRAIG, of Idaho, talked about the marvels of the tax credit idea. While this may be somewhat difficult for people to see, let me just take a minute just so people understand the fundamental distinctions.

First of all, this is rather transparent. This bill has been around for 7 years, and all of the sudden, less than 36 hours ago, we have parachuted in here a tax credit idea. In fact, the distinguished Senator from Idaho offered a tax credit idea a number of years ago and the administration would not support it at all.

So all of a sudden, rather than the 11th hour, virtually the 12th hour, all of the sudden, there is this great conversion on the way up to Capitol Hill; all of a sudden we are for family medical leave and we have a better idea.

So consider the timing, first of all, which I think is critical.

Second, consider the fact we never had any hearings on this. We had 17 hearings on this bill. There have been no hearings at all on the idea of a tax cut.

It adds to the deficit. I read the bill. It is $2.7 billion for what they are proposing and no identification of the offset of those revenues. I would just suggest to my colleagues, we will be hearing speeches about the deficit today. Adding $2.7 billion to the deficit without an offset is the height of irresponsibility at this particular hour.

Furthermore, my colleague from Utah just pointed out that this legislation that they are offering or will offer actually covers more workers. The fact of the matter is it does not at all. In fact, the study shows, under our legislation, 72 percent of the work force will be covered; 60 percent under their legislation.

Besides, you are not covered—one of the great complaints around here is we pass legislation and do not have it apply to the Federal Government or to the Congress. The tax credit would not cover the Federal Government, the Congress, nonprofit organizations; millions of people would be excluded from any kind of family and medical leave legislation because it would be exclusively based on a tax credit idea.

Jobs security for all eligible employees. Under ours, yes. Under the tax credit proposal offered by the President, it is up to the employer year to year to decide what options are available. Ours is a minimum of 12 weeks; they get 1 day.

The right to return to the same or equivalent job. Ours gives you that right; under the tax credit idea, no.

Intermittent leave. This is something I know the Senator from Utah cares about. Ours, you get intermittent chemotherapy or dialysis. We understand you do not take that altogether. You may need a day or a week to get that done. Our legislative allows that. This bill specifically prohibits intermittent leave.

So, Mr. President, with all due respect, I must say, that is not really something that is being offered, in my view, in seriousness at all. It would add to the deficit considerably. It does not cover the same number of workers.

Mr. President, let me conclude my own remarks on this. It has been 7 years that I have been involved in this effort. I offered this legislation 7 years ago. We worked very hard to improve this legislation. Senator BOND and Senator PACKWOOD have offered invaluable help. Senator COATS of Indiana has been tremendously helpful to put together a bipartisan bill.

I think the Senator from Tennessee said it well. This is really about human decency. This is saying whether or not you understand that today there are millions of people who are literally holding body and soul together in a difficult job market out there, faced with difficult family issues and problems, you ought not to force a family to make the choice between their job and their family.

Employment security and family security are critically important. In the absence of this legislation, you take millions of people and force them to make the cruel choice between keeping a job or keeping their family together.

If you do not believe me, just visit any children's hospital in this country, spend 5 minutes there and talk to the people who are struggling, middle-income people, lower income people, without the influence or without the position to be able to guarantee their jobs.

This bill says that, God forbid, you are in that situation, we understand it and we care. And that is all this veto override is about. I urge my colleagues to override this veto.

Mr. DOLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. DOLE. Mr. President, has leader time been reserved?

The ACTING PRESIDENT pro tempore. Leader time has been reserved.

Mr. DOLE. Mr. President, I would like to take 3 minutes to summarize my more lengthy remarks which will follow. Then I know the Senate majority leader wants to wind up the debate.

Mr. President, I am going to urge my colleagues to sustain the President's veto. I am not certain we can do it in the Senate, but I think it will be done in the House.

The one word people need to remember in all this is the word "mandate." If you are a small businessman or a small businesswoman, do not worry about the tax credits or all the other things that came in at the last minute. Worry about the word "mandate." That is a tax on your business. Might as well say we are going to increase your taxes; whatever it takes; it is a mandate.

And the thing the people are concerned about in my State, a small State, yes, businessmen and businesswomen, are all these mandates coming from Washington. And yet here is another mandate that Congress wants to stick you with.

It is also worth noting that this legislation passed the Senate on October 2, 1991. We have had a year pass since that time and it is not until now, a few weeks before the election, that we are getting excited about this particular piece of legislation.

And keep in mind one or two things. We are not voting on whether family and medical leave is a good idea. We all support family leave. In fact, many corporations have much better plans than this and many more are going to adopt such plans.

If everybody was voting on the premise that we are all for family leave, obviously the President would sign the bill.

What we are really voting on, however, is the best way to bring socially desirable programs and benefits to the American people.

And there are some who will say the only way you can do that is to get the government involved; let the Government do it or mandate that the businessmen and women do it. Let somebody from Washington, DC, tell somebody in Winfield, KS, or some other medium-sized town anywhere in America, this will be your leave policy. One size fits all. Whether you are married with children, single, young, middle aged, older worker—one size fits all. The same old story that we have had for years and years from the other side of the aisle: The Government knows best. The Congress knows best.

So I am just suggesting this is a hidden tax; might as well be a direct tax on the employer. Benefits are going to come out of the employer's pocket. He is going to have to reduce it in some way, maybe by reducing some of the employees. Then you get lots of leave. I suggest we are going in the wrong direction.

The Senator from Idaho [Mr. CRAIG] has already introduced the Family Leave Tax Credit Act. He has been out front on this. I have some reservations about that, but I did cosponsor it on the assumption that we will pay for it. We cannot charge it to the deficit.

So I just suggest, Mr. President, let us have this vote. Let us let the other side see how much politics may be in it. Let us have the House sustain the veto. And then let us come back, maybe next year, with some rational program that does not mandate what employers must do in America, whether they be men or women.

So I urge my colleagues to help us sustain this veto. I think we may be a vote or two short.

But I urge my colleagues to take a look at the word "mandate." Look it up in the dictionary.

Call somebody out in your State before you vote and ask them what they think about mandates from Washington; not benefits, mandates from Washington. Then I think you will come in here and vote to sustain the President's veto.

Mr. President, I urge my colleagues to vote to sustain the President's veto of S. 5.

S. 5: POLITICALLY MOTIVATED

It is unfortunate that the Democrat-controlled Congress continues to pursue its politics as usual agenda—even when the issues are as important as family and medical leave legislation.

It is worth noting that this legislation passed the Senate on October 2, 1991, with action in the House only a few weeks later. And yet in the year that has passed since that time, a conference—lasting a few minutes—was not held until August and the bill was not sent to the President until the height of the election season. If this legislation is not politically motivated, I do not know what is.

SUPPORT FAMILY LEAVE PROGRAMS

Mr. President, before this vote occurs, it is very important to understand the issue before us.

We are not voting on whether family and medical leave is a good idea or whether we support family and medical leave programs. If that were the case, the President would not have vetoed this legislation and this bill would have been law a long time ago.

What we are really voting on is the best way to bring socially desirable programs and benefits to the American people.

S. 5: GOVERNMENT MANDATE

My colleagues on the other side of the aisle like to mandate these benefits. They like Washington, DC reaching out into every community, every office, and every factory—telling the American people what is best for them. They believe that those of us in Congress always know best—that we know it all.

S. 5: A HIDDEN TAX

The sponsors of S. 5 also like taxes for that is what this bill amounts to. Indeed, there is no difference between this bill and a new tax on employers which would fund family and medical leave benefits.

The bottom line in either case is that the money to fund these benefits comes out of employers' pockets whether it is a direct tax or an order from Washington to provide these benefits.

THE ADMINISTRATION'S PROPOSAL

Mr. President, yesterday the distinguished Senator from Idaho [Mr. CRAIG] introduced the Family Leave Tax Credit Act of 1992 of behalf of the administration

I am pleased to be an original cosponsor of this important legislation which provides the basis for flexible leave programs that will reach more workers and more businesses.

A comparison between S. 5 and this legislation—which provides a refundable tax credit to help employers provide these important benefits to their employees—further exposes the many weaknesses of S. 5 and shows why the mandate approach will cause more harm than good.

INCENTIVE VERSUS MANDATE

First, the administration's proposal provides an incentive for businesses to establish family and medical leave programs.

S. 5—which embraces the mandate approach with a vengeance—will stifle job creation, encourage job loss, and force a reallocation of employee benefits from negotiated benefits to Government-mandated benefits.

You can be sure that with the Government telling employers that they have to provide a new benefit without helping them do it—business will be forced to offset this new cost by providing less of something else.

FLEXIBILITY VERSUS ONE-SIZE-FITS-ALL

Another important advantage of this legislation is that it provides flexibility in the establishment of such programs. S. 5 is a one-size-fits-all mandate. Everyone gets 12 weeks; everyone gets the continuation of existing health insurance benefits. That is it—no less, no more.

Under the approach contained in the President's plan, employers and employees can design the program that best meets their needs. The $1,200 credit could be used to cover any variety of benefits for the absent employee—such a continued health coverage, pension or 401K contributions, partial pay, or any other component of a flexible benefits package that an employer may offer.

HELPS MORE BUSINESSES AND WORKERS

A third significant advantage of this legislation over S. 5 is that it helps more businesses and workers. I am informed by the Office of Management and Budget that S. 5 only reaches 300,000 businesses and about 33 million workers.

The administration's proposal reaches 6 million businesses or 20 times more workplaces than S. 5. In addition, it covers over 48 million workers or 15 million more than S. 5.

So if we are looking at which bill delivers the goods to more workers and their families, the President's proposal wins by a landslide.

It is also worth noting that as S. 5 carves out small and medium-sized businesses in a weak attempt to limit the acknowledged economic damage it would do, it ends up leaving out those very companies and their workers whose needs are the greatest and where costs are the most burdensome.

AN ISSUE OR A BILL?

Mr. President, I think the question for my colleagues on the other side of the aisle is whether they want an issue or a bill.

To date, they have only wanted an issue and have worked hard to keep it alive and kicking for the election.

We all support family and medical leave. I have repeatedly expressed my commitment to such programs.

S. 5 is nothing more than an in kind tax on business—a clumsy, harmful, one-size-fits-all mandate.

The administration's proposal takes the positive approach of helping employers set these programs up for their workers. It provides the necessary incentives to do so and allows business and its work force to design a program that works for them based on individual choice—and not the choice of beltway insiders.

Mr. MITCHELL. Mr. President, every other industrialized country in the world has a national family leave policy. Most of them require paid leave. This bill requires only unpaid leave, and applies only to businesses with more than 50 employees. So let us understand the bill that we are actually voting on this morning: Unpaid leave applied only to businesses with 50 or more employees.

Seven years ago the first family leave legislation was introduced. Seven days ago, the President first proposed a family leave tax credit. That alone tells us the story.

And the record should be clear. Tax credits are not a guarantee of job protection which is the essence of a family leave policy. Nonprofit employees, like teachers, firefighters, police officers, will not be covered by a tax credit. Federal employees will not be covered by a tax credit.

No employees—none whatsoever, will have a guaranteed period of leave for family crisis under a tax credit. And even if a business chooses to use the credit and offers employees family leave, businesses would not be required to re-employ individuals at the same position or even at a comparable position.

In order for businesses to claim the tax credit for those individuals taking medical leave for health problems, that leave would have to be uninterrupted. That would exclude individuals with serious illnesses like cancer, where chemotherapy treatment may be for 2 weeks each month over a period of several months. Is an employee with cancer, receiving chemotherapy treatment, less deserving of leave than an employee recuperating from another, perhaps less serious, health problem that happens to involve uninterrupted leave? I do not think so. I do not believe any Senator thinks so. Yet that is what is involved in the tax credit proposal.

For a family facing a health crisis or the birth or adoption of a child, job security should not be optional. No one should be forced to choose between a job and a family.

Senators should be clear when they cast their votes this morning, there is only one meaningful family leave bill before us and that is the legislation on which we are about to vote. I urge my colleagues to vote to override the President's veto and support this legislation, which will strengthen and support American families.

Mr. SIMPSON. Mr. President, when the President vetoed S. 5, the family and medical leave mandate, he did so while expressing his strong support for profamily policies in the workplace. He was quite clear about that. It is not family and medical leave, per se, that our President objects to, it is the imposition of mandatory terms and conditions of employment by Federal legislative and bureaucratic fiat. And so President Bush has offered us a better way, a more likely way, to achieve that goal of flexible family leave.

The President's proposal is based on incentives rather than mandates. Any fool knows that you can catch more flies with honey. The family leave proposal that we are introducing today on behalf of the President recognizes that American business will be far more willing to adopt family-friendly workplace policies if we give them some good, honest, cold, hard incentives to do so. You can lead a horse to water, but you can't make him drink, but you can put salt on his tongue.

Mandating behavior by Federal decree is not what this economy needs right now. We face major challenges to get this economy moving and growing. Tossing mandated family leave onto American business had to be one of the most foolish things we could have done. It is time to put politics aside and stop lobbing bills down to George Bush that are designed to blow up under his feet. Don't forget that the House and Senate passed family leave legislation almost 1 year ago, but they have kept it tucked away in a filing cabinet until now.

The President's family leave proposal is a good one. It reaches 15 million more workers than the bill that was just vetoed. It would also reach 20 times the number of workplaces—people who would have been left out under the Democrat plan. We really can't overlook that. And that is possible because we are not attempting to force mandates down the throats of small enterprises that can't handle them, on the contrary, the President's family leave package is designed to help small businesses, by making it possible for them to offer the kinds of important family-related benefits that will enable them to attract the best employees.

So the President's plan accomplishes two major points. It reaches more people and it does it in a way that offers American business an opportunity to comply, to see the adoption of family friendly workplace policies as in the company's best interests. It will be more likely to stick that way—to become an accepted part of the culture of commerce, rather than another burr under the saddle.

The tax incentives do not require that any particular form of flexible leave be adopted. Instead, the proposal allows employers and employees to arrive at a program based on their specific needs. That is critical. It is that extra measure of salt.

So I urge my colleagues to do something fine for American business and for American families, and take up and pass the President's family and medical leave proposal.

Mr. JEFFORDS. Mr. President, all of us are guilty of spending a lot of time talking about family values. But we all know that what we say or do is of little importance in fighting crime or educating children compared to what happens on the front porch or in front of the fireplace. Families make the difference.

Fortunately, today anyway, our talk is cheap. The bill before us would provide a substantial amount of help to families for a very low cost. According to estimates by the General Accounting Office, the cost of this legislation is about a penny and a half per covered employee per year. Spread that cost over all employees, and the cost is probably a fraction of a penny.

The GAO's estimates have been criticized, and to be sure there are a lot of assumptions made in any such estimate. But the views of the GAO are buttressed by the real world experience of those States that have adopted similar legislation. My own State of Vermont has recently adopted maternity and then family leave, and employers, far more than are covered by this bill, have been able to comply with the law without the drastic consequences predicted by opponents of this legislation.

And while there is some doubt about the cost, there is no doubt about the benefits. Families in America are struggling to hold down jobs, raise children and care for parents at the same time. There are limits to what the Federal Government can do to help. But at the very least, we must give families the tools to cope.

Foremost among these tools is the ability to take unpaid time off to care for a new baby or a sick child, for an ill parent or spouse, without jeopardizing your job. I think we must guarantee such leave, while minimizing the impact upon businesses.

Over the 7 years or so that we have been working on this legislation, I think we have accomplished a fair balance between the needs of workers and those of employers. And if the results in the States are any guide, I think this bill will succeed.

I want to commend the many people who have worked on this legislation, notably Senators DODD and BOND, and their staffs as well. They have been open to suggestions for improvement but have never lost sight of the importance of this issue for the working people of America and their families. I urge the Senate to override the President's veto, and hope the House will do the same.

Mr. REID. Mr. President, I rise today to support the Family and Medical Leave Act.

I can think of no other group of Americans in greater need of protective legislation than working mothers.

In this campaign season, we hear so much about candidates being profamily. This legislation is profamily and will provide the job protection our families need in desperate times.

This bill provides 12 weeks of unpaid and I emphasize, unpaid leave per year for the birth of a child or a serious family illness.

If a working woman chooses to have a child, we should do all we can to ensure that the family is not strained by the prospect of her losing her job.

Our fathers, as well, should have the opportunity to spend the first few months of his baby's life without the fear of unemployment.

This bill contemplates the concerns business owners may have and addresses them adequately.

Ninety-five percent of businesses are exempt. Thirty days' notice is required. Medical certification can be requested. Part-time employees are not included.

We must recognize that we live in a society that cares about families and children. And we must recognize that to force these employees out of work, we are asking them to begin receiving public assistance. If they are not working, they are neither receiving a salary, nor any health coverage.

We then increase the number of people on welfare and on Medicaid.

Working mothers constitute a greater percentage of our work force every year. And single mothers are growing in numbers each year.

These single working moms are some of the hardest working people I know.

Some work multiple jobs, without any assistance from their absent spouse, so that they may better the lives of their children.

This bill, in a small way, will improve the lives of millions of children and ease some of the great burdens on our working parents—both mothers and fathers.

If this Congress commits itself to invest in families, by allowing parents the flexibility needed for handling serious medical emergencies and pregnancies, then America guarantees satisfied and more productive employees and stronger, healthier families.

I urge this body to override the veto of this important legislation. American families deserve our support.

Mr. ADAMS. Mr. President, I rise to express my strong and longstanding support for the Family and Medical Leave Act. I am proud to have been an original cosponsor of this legislation. Working families in my State of Washington and throughout the United States need this legislation. It is vital that we override the President's veto.

"Family values" has become a Republican campaign buzzword. This legislation is fundamental to working families across America. The President says he understands what it is like to have a seriously sick child. If he wants every American to be able to spend time with their sick children, he should sign this bill, not veto it.

We are at a critical point in this country. Ten million Americans need jobs, and many also need to care for their families. Work and family should not be opposing forces. They should not be mutually exclusive. It is time for American businesses to recognize that what is good for workers and families is also good for them and the economy.

This bill is very simple. It guarantees employment for someone who needs a short leave to care for a new child or ill family member, such as an aging parent, or to recover from his or her own serious illness. According to the GAO, the costs are de minimis: Only $5.30 per eligible employee per year. This is far less than the cost to employers of hiring or retraining workers.

As chairman of the Labor Committee's Subcommittee on Aging, I recognize how important this legislation is to older Americans. Two of my top priorities as chairman have been caregiving and intergenerational services. This legislation addresses both those priorities. The National Council on Aging estimates that more than 20 percent of the Nation's 100 million workers have some caretaking responsibility. Three out of four caregivers are women. The demands of caregiving make holding a job very difficult. As with caring for children, workers should not have to make a choice between working or caring for an ailing parent.

America lags far behind other industrialized nations on this issue. These countries are competitive and productive, and they support families. We cannot afford to fall further and further behind in the global marketplace. This legislation will help bolster America's competitiveness.

I urge all of my colleagues to override President Bush's veto of this legislation. No American family should be forced to choose between a paycheck and their own health or that of their children or parents. This legislation is about support for our families.

Mr. DURENBERGER. Mr. President, I rise in support of the family medical leave legislation that the Senate currently is considering. In my view, this bill is an idea whose time has come, and I support the measure wholeheartedly. Accordingly, I will vote to override the President's veto of this legislation.

Mr. President, the family leave bill, S. 5, provides up to 12 weeks of unpaid leave for a worker to care for a newborn child, or a sick parent, spouse, or child. During the leave period, the bill requires the employer to continue health care coverage, if provided by the employer, at no cost to the employee. In addition, the employer must grant an individual who returns from family leave their original job or an equivalent job.

This bill is necessary because our society is changing from what it was 25 years ago. At that time, we had primarily single income families. The father went to work, and the mother took care of the children. But in Minnesota our family structure has changed.

In Minnesota, we now have many families where, for economic or personal reasons, both the father and the mother work. In addition, in many instances, we have single parent families where the mother or father must work and care for the children. This leads to new pressures on the family. When a child, spouse, or parent becomes ill, a worker must take care of that sick family member while simultaneously worrying about his or her job.

Mr. President, in a caring society, individuals should not have to choose between caring for family members and their job. I do not want Minnesotans to be in that position. It just is not right.

I believe the family is the basic building block of our society. This bill will benefit American families more than it will harm American businesses. That's why I supported this family leave bill when we voted on it about 8 months ago, and I support it now. In these trying economic times, we must promote and support families. This bill starts us down that road.

There are some things that this bill does not do. This bill affords 12 weeks of unpaid leave. It requires an employee to obtain medical certification before taking the leave. Accordingly, the bill is intended to provide relief to families with long-term illnesses and other crisis situations. But many families need leave for a short period of time, when a child gets the flu. This bill does not address that situation.

I introduced legislation during this session that provides relief to families during short-term illnesses. I followed the model that my own State of Minnesota developed. Under my legislation, employers that already provide sick leave would be required to allow the employee to use at least 5 days of that leave to care for a sick child, parent, or spouse. This would provide much needed assistance to working parents when their children get sick.

In addition, some working parents want to take longer periods of time to bond with their newborn children. I support giving these parents up to 5 years of unpaid leave and then providing those parents with a preferential right of rehire to their old jobs. This would allow longer periods of time for parents to spend with their children.

I regret the fact that this bill has become a battleground. Unfortunately,

we have failed to take advantage of numerous opportunities to come together across party lines to find a consensus solution to the needs of working families. The price of that failure is the undercurrent of political rancor which undermines this moment of real progress for American families. Hopefully, we can learn a lesson from that.

Mr. President, the family leave bill that we are voting on today does not do everything that I would have liked it to do. It does not address long-term bonding with children, and it does not address short-term needs of parents to care for their children who come down with a short-term illness. But the family leave bill is a significant start. It provides relief in crisis situations to working parents who need time off to be with their family members.

America needs this bill. I believe this bill provides a tangible way for us to support the family in difficult economic times. Accordingly, I support the bill and urge my colleagues to support it as well.

Mr. GRASSLEY. Mr. President, I rise today, to speak on an issue that all of us in this body agree is worthy of attention and that issue is family and medical leave. Families are constantly challenged by the often conflicting demands of work and family. No one should be forced to sacrifice one for the other. However, some families feel they have few choices to help them meet the challenges.

When my daughter Michele, her husband and family relocated to the Washington area, they lived with Barbara and me. I know first hand how they struggled to accommodate the demands placed upon them by their new employers and still be responsible to their children. For a year and a half, each morning, I took my grandchildren to childcare while my daughter took her husband to work. We all had to change our schedules during that year and a half, but we were lucky, we had one another to rely on.

Last fall, the Senate passed a piece of legislation that requires businesses with more than 50 employees to offer 12 weeks of leave following the birth of a child, an adoption, or to care for an ailing loved one. The intentions of this bill, S. 5, are worthy, but the bill is still flawed. I didn't support the bill then, and I don't support it today. To begin with, the bill doesn't even cover the majority of the American work force. In addition, it doesn't acknowledge the fact that many workers cannot afford to forgo 3 months' salary. And last, it fails to recognize that all families, as well as individuals, are different and that their needs vary. Who can best decide what families and individuals need? This bill is a straightforward Government mandate which does not take into account the different needs of our families and, therefore, doesn't allow for the flexibility to develop leave policies that best suit each individual.

The proponents of this bill often give the impression that all workers would be entitled to the leave benefit, if this bill is passed. They fail to say that the majority of the American work force will not be covered by this bill. This bill only requires businesses with more than 50 employees to offer the leave benefit. Businesses with less than 50 employees are exempt from the provisions of this bill. Sixty percent of the American work force is employed by these businesses. In Iowa, 40 percent of the population works for small businesses. Therefore, a majority of the current American work force would not be covered by this bill. What does this say about the majority of the work force? The two largest newspapers in my State, the Des Moines Register and the Cedar Rapids Gazette, in recent editorials, identified this critical flaw.

Furthermore, the leave provision of S. 5 is unpaid. Many workers simply could not forgo 3 months' salary in order to take advantage of the leave benefit. This benefit is for the well-off worker—it's a yuppie benefit. It does nothing to help the struggling family—the family that lives from paycheck to paycheck. These families would have a hard time accumulating enough savings to entitle them to 3 months off, let alone provide for a new family addition.

This bill hardly seems fair to the majority of the work force. Leave policies should accommodate the needs of each individual and place of employment. This is something that is best decided by the parties involved, not the bureaucrats in Washington.

So, how can we assist families as they cope with the demands of work and family. Each American family is different, has different needs and faces different challenges. Families need flexible leave policies that suit their needs. I do not believe that a strict mandate from the Government, which allows no room for flexibility, is the answer. Individuals should have the opportunity to work with their employers to develop a leave policy that best suits their needs.

Over the last few years, a number of my own employees took leave after the births of their children. Several employees wanted to stay home with their new children for an extended period of time, yet still be responsible to their jobs. I was willing to accommodate this desire by arranging for them to work part time from home. They were able to perform their duties by having a computer at home and access to a telephone. This arrangement worked for all of us. By working together, we developed a leave policy that best suited their families and job demands. The legislation before the Senate today would not have allowed this to happen. There is no room for accommodation and flexibility in this bill.

Furthermore, if the Government begins to legislate employment benefits, employers may be forced to eliminate, or reduce other benefits, such as flextime and child care, in order to pay for the mandatory ones. If it does, a dilemma is created. Is mandating one benefit at the expense of other benefits, perhaps more desirable ones, in the best interest of all the involved employees? This bill ignores the diversity of our work force. We must move in the direction of encouraging the adoption of leave benefits that are suited to the needs of each employee. One such approach is to offer tax credits to businesses that adopt leave policies.

I am an original cosponsor of a bill introduced by Senator CRAIG, the Family Leave Tax Credit Act of 1992. This bill addresses the flaws of S. 5. The bill includes small- and medium-sized companies—the very companies that employ the majority of the work force, but are excluded from S. 5. The bill provides an opportunity for an employee to work with their employer to tailor a leave policy that will meet their needs. And importantly, the bill provides an employer with resources to pay a wage supplement to employees on leave.

The bill creates a 20-percent refundable tax credit to employers that provide family leave benefits. This credit is available to companies with less than 500 employees. These small- and medium-sized companies employ 80 percent of Iowa's working population. The proceeds of the credit can be used to defray leave costs, to purchase additional insurance or to pay a partial wage supplement. So many new mothers and fathers would like to stay home with new children, or take time to care for an ailing loved one. Under the provisions of this bill, someone could take a period of leave, and still receive a partial salary. This partial salary could make a difference whether someone could afford to take time off or not. Under the provisions of S. 5, this option doesn't exist. These are the families that need help—not the wealthy families.

Families that work for small businesses, and struggle financially, are entitled to leave benefits and their employers need to be encouraged to offer such benefits. The bill vetoed by the President does not do either one of these things. However, Senator CRAIG's bill does. It helps small businesses offer family and medical leave benefits, and it provides an opportunity for families to have some financial assistance in order to take time off.

I understand the struggles facing Iowa families, and American families. Decisions concerning leave policies are best made between the employee and the employer. The intent of the legislation offered by Senator DODD, S. 5, is worthy, but it's flawed. The Des Moines Register recently wrote, "It's

easy to see that a better solution than this family-leave bill is needed if the issue of balancing work and family needs is to be fairly addressed." I hope we can put aside the current partisan posturing, and find an agreeable solution that will really address the needs of our American work force.

Mr. CHAFEE. Mr. President, I support the Family and Medical Leave Act of 1992. This legislation would provide employees with 12 weeks of unpaid leave in the event that a worker must take time away from the work force to care for a newborn, a sick or adopted child, or an ailing parent. This bill is profamily, proworker, and prochildren. It is a good bill that deserves to be signed into law over the President's veto.

The family and medical leave bill responds to the changing needs of the American family and the American worker. Today, about two-thirds of all women with children work full time. One-quarter of all children live with a single parent. And in 9 out of 10 two-parent families, both parents work outside the home—usually out of economic necessity. For most Americans it takes two incomes just to make ends meet.

S. 5 would help employees balance job responsibilities with family obligations. No father should be forced to choose between caring for a sick child and his job. No mother should fear that she will be fired from her job—and lose her health insurance—because she needs to take a few unpaid weeks of leave to stay with her newborn or adopted child. Working men and women should not have to give up their job security to care for a failing elderly parent.

Mr. President, I am proud to have supported this legislation since its infancy. Back in the 100th Congress, I joined my friend from Connecticut, Senator DODD, as a principal cosponsor of the Parental and Medical Leave Act of 1988. Today's bill has evolved considerably over the years—adding elder care provisions, for example—but it still represents my strong belief that no worker should be forced to make that terrible choice between caring for a family member and keeping his or her job. As a society, we need laws to protect employees from having to make that awful choice.

Senator DODD should be congratulated for his efforts to work out a compromise agreement on the family and medical leave bill. Last October he worked diligently to forge a compromise with the distinguished junior Senator from Missouri—Senator BOND—that made two improvements in the Senate bill. First, it limited employee eligibility to those individuals who have worked 1,250 hours, or an average of 25 hours per week, over the previous 12 months. And second, it aimed to prevent abuses of the legislation by requiring employees to repay health insurance premiums paid during the leave if that employee does not return to work at the end of his or her absence from the work force.

These were sensible, common sense changes that have improved this bill considerably. The changes reflect the Senate's concern that this bill should help families without creating any unreasonable burdens on the Nation's small business community. This bill also recognizes the economic challenges conforming the Nation's small business community—as a result, businesses with fewer than 50 employees are exempt from the act.

The Family and Medical Leave Bill of 1992 is the product of years of debate, compromise, and revision. I believe that this bill represents a fair compromise, and is a sound measure that will make a real difference in the lives of working men and women. It is a strong bill that deserves to be signed into law.

Mr. SANFORD. Mr. President, recently, the mother of one of my staff members had a heart attack. She was taken to the hospital in critical condition. My staff member is an impressive fellow with his priorities in the right order, and he knew that it was important for him to be with his mother as she struggled to recover. He asked to take time off to be at the hospital, and we were glad to give him the leave. I wouldn't have had it otherwise. I'm very pleased to report that my staffer's mother is now recovering smoothly, and my staffer is back at work.

Sadly, far too many workers in this country run the risk of losing their jobs when they are faced with a situation like this one. They are told that if they take time off to care for a sick family member or a new baby, they need not bother to come back to work. I don't think that's fair; I don't think that's right. That's why I am pround to be a cosponsor of the Family and Medical Leave Act, a simple bill that would guarantee up to 12 weeks of unpaid leave for employees when a child is born or adopted or when there is a serious illness in the family. No one should be faced with the horrible dilemma of choosing between their jobs or their families.

Our society can no longer afford for wage-earning and care-giving to be incompatible activities. Americans families need both basic job security and support in times of family emergencies. Young children need and deserve secure care in their earliest months of life. This is what real family values are all about.

Passage of the Family and Medical Leave Act is not only a prochild, profamily step: this bill is also probusiness. Studies show that companies and States that offer family leave benefits find this to be a cost-effective policy, improving worker morale, lowering the absentee rate, and reducing employee turnover. The bill before the Senate today includes a small business exemption, requiring unpaid leave only at businesses with 50 or more employees. This provision will exempt 95 percent of all businesses but will still provide coverage for over 50 percent of the American work force. It's a reasonable approach.

The Family and Medical Leave Act is good policy for working Americans, for children, for the elderly. It makes good business sense. It is no wonder that 72 percent of the population supports the bill. Passing this legislation is one of the most important steps we can take toward strengthening American families. After all the rhetoric about family values from President Bush during this political season, I am truly sorry that he has chosen to veto this bill, passing up the opportunity to really do something to help American families, instead of just talking about them. I urge my colleagues here and in the House to vote to override this sad veto.

Mr. GORTON. Mr. President, this debate is not about whether employers should provide family and medical leave to their employees, but how to achieve the delicate balance between legitimate business concerns during a recession and providing job security and protection to working people and their families. It is reprehensible to me and to most Americans that a woman who chooses to start a family must risk her employment because her employer is not sympathetic to the need for maternity leave. In the United States in 1992, no woman should have to make such an unbearable choice. However, the family and medical leave legislation that the President vetoed 2 days ago is more complex; it concerns the ability of medium-sized business to afford additional federally mandated employee benefits in a recession.

Family and medical leave legislation must consider the delicate balance between employer and employee concerns if it is to be meaningful, lasting, and beneficial. For example, in my State of Washington the legislature has enacted a family leave law that responds to the needs of working women without burdening the economy. Specifically, businesses with more than 100 employees must provide up to 12 weeks of unpaid parental leave to care for a new or adopted child. I support this carefully crafted solution to meet the needs of the modern family and the challenges of struggling businesses.

The question facing me today—as a representative of the people of Washington State is this: Should I vote for a Federal mandate lowering that threshold from businesses of 100 employees to businesses of 50. Today, I am not ready to take this step. S. 5 would require businesses with as few as 50 employees to provide employees 12 weeks of unpaid leave for illness, the birth or adoption of a child, or to care for a sick

child, spouse, or parent. Employers found in violation of the Act would be required to pay monetary damages equal to wages, salary, and employment benefits, as well as consequential damages and attorney fees. In addition, employers may be fined $100 per offense for not posting a notice summarizing employees' rights to file a charge against the employer for violating the law.

The difference between a 100-employee threshold and a 50-employee threshold is significant. According to the Washington State Department of Employment Security, in 1990, the total number of employers with 100 or more employees was 2,830. The combined employee payroll for these employers is $1,009,382. The total number of employers with 50 or more employees is 6,512. The combined employee payroll for these employers is $1,262,093. Lowering the threshold for family leave from 100 to 50 would mean an additional 3,682 employers or 130 percent expansion of the number of covered employers. The Washington State Legislature has debated this issue at length and has decided against lowering the exemption rate.

In today's economy this bill presents a Hobsons choice. Either vote against extending family leave, a policy which I support, or hurt the ability of small businesses between 50 and 100 to stay in business during this recession. In normal times I would be inclined to support the legislation before us. However, this bill ignores the fact that requiring benefits by midsized employers will add to the costs of labor enduring the very moment when these small businesses are running on the edge due to this recession. That cost could be as much as $7.9 billion according to the Small Business Administration. Increased labor costs mean fewer jobs. Since my top priority as U.S. Senator is to provide jobs and economic opportunities to the families and communities of Washington State, I won't now support this Federal mandate of family and medical leave.

Meanwhile, there is an alternative family and medical leave proposal that uses incentives rather than mandates, that awards rather than punishes those employers. Senator CRAIG from Idaho has introduced legislation which provides a 20-percent refundable tax credit to small- or medium-sized employers that provide family leave to their employees. All employers with fewer than 500 employees are eligible for the family leave tax credit.

The amount of the credit is 20 percent of the cash wages that the employer provided to the employee during the period of family leave, or would have been provided to the employee during that period had he or she not taken the leave. The maximum amount of wages taken into account for this purpose is $100 for each business day. The maximum period of family leave for which the credit is available would not exceed 12 weeks in any 12-month period. This results in a maximum available family leave credit of $1,200 per employee per year.

Perhaps the most significant difference between the Craig alternative and the legislation before us is the issue of how to pay for family and medical leave. The Dodd legislation pretends that requiring a midsized employer to provide 12 weeks of unpaid leave with full health benefits will cost the employer nothing. The Craig alternative acknowledges the reality of paying for employee benefits, particularly during a recession.

For the past year I have heard from many Washington State small business people. From Spokane to Seattle, and Bellingham to Kennewick, employers with more than 50 employees have urged me to recognize their contribution to our economy and not impose further unreasonable Government regulations—because jobs will be lost and businesses will fail. In our struggling economy, I cannot vote for another mandate on businesses that will further limit growth.

The ACTING PRESIDENT pro tempore. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding.

The yeas and nays are required.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. SEYMOUR] is necessarily absent.

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 68, nays 31, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—68

Adams	Dixon	Metzenbaum
Akaka	Dodd	Mikulski
Baucus	Durenberger	Mitchell
Bentsen	Exon	Moynihan
Biden	Ford	Murkowski
Bingaman	Fowler	Nunn
Bond	Glenn	Packwood
Boren	Gore	Pell
Bradley	Graham	Pryor
Breaux	Harkin	Reid
Bryan	Hatfield	Riegle
Bumpers	Inouye	Robb
Burdick, Jocelyn	Jeffords	Rockefeller
Byrd	Johnston	Roth
Chafee	Kennedy	Sanford
Coats	Kerrey	Sarbanes
Cohen	Kerry	Sasser
Conrad	Kohl	Simon
Cranston	Lautenberg	Specter
D'Amato	Leahy	Wellstone
Danforth	Levin	Wirth
Daschle	Lieberman	Wofford
DeConcini	McCain	

NAYS—31

Brown	Domenici	Hatch
Burns	Garn	Heflin
Cochran	Gorton	Helms
Craig	Gramm	Hollings
Dole	Grassley	Kassebaum
Kasten	Pressler	Symms
Lott	Rudman	Thurmond
Lugar	Shelby	Wallop
Mack	Simpson	Warner
McConnell	Smith	
Nickles	Stevens	

NOT VOTING—1

Seymour

The PRESIDING OFFICER. On this vote the yeas are 68, the nays are 31. Two-thirds of the Senators voting, a quorum being present, having voted in the affirmative, the bill on reconsideration is passed, the objections of the President to the contrary notwithstanding.

Who seeks recognition?

Mr. WELLSTONE. Mr. President, the U.S. Senate has voted to override the President's veto of the Family Medical Leave Act. I believe it was 68 votes in favor.

It was, I think, a historic vote about a historic piece of legislation.

There are many, many different ways to talk about this issue. There are some who have said if the President of the United States wants to talk so much about family values and the Vice President wants to talk so much about family values, then why not have value families? That is one way that you can talk about it, and I suppose that makes for a good sound bite.

I would like to try and talk about this in a little bit more of a personal way which for me is probably the most sincere way that I can speak about it.

Mr. President, if one of my children, God forbid, was ill and I left the Senate and went back to the State of Minnesota and for 12 weeks stayed with a daughter or a son, I would miss votes. I would miss committee meetings, but when I came back after 12 weeks people here would say you did the right thing. I would not lose my job. I would not even lose any income.

The same thing would hold true for the President of the United States if someone in his family were faced with an illness and he took off from work for a few weeks, 6 weeks or up to 12 weeks.

So, Mr. President, what I want to argue on the floor of the Senate is that what applies to those of us in the Senate and applies to the President of the United States should apply to people all over Minnesota and to people all over the United States of America.

Both my parents had Parkinson's disease. When Sheila and I were in our early thirties, they moved out to Norfield, MN. We took care of them. I felt then and more strongly now that if as a parent, or parents your preschooler is ill, or after the birth of a child, or for us now trying to take care of our parents, if one of our parents is ill, you ought to be able to take some time off from work and not have to worry about losing your job.

Mr. President, the President's veto of the Family and Medical Leave Act was a profoundly mistaken veto. It is pro-

foundly wrong. It is not good for him politically. But far more importantly, it is not good for people in the country.

I am very proud that the U.S. Senate today voted to override that veto. I hope the House of Representatives does the same thing. Either way, no matter what the outcome, family and medical leave is an idea whose time has come.

We ought to pass legislation which makes it the law of the United States of America that families will be protected in such a way that a parent can take off from work to take care of a loved one and not have to worry about losing his or her job.

I thank you very much, Mr. President, and I yield the remainder of my time.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TAX ENTERPRISE ZONES ACT

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

The assistant legislative clerk read as follows:

A bill (H.R. 11) to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH].

AMENDMENT NO. 3161

(Purpose: To amend the Internal Revenue Code of 1986 to allow individuals to designate that up to 10 percent of their income tax liability be used to reduce the national debt, and to require spending reductions equal to the amounts so designated)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 3161.

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

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

The amendment is as follows:

At the end of title VIII of the committee amendment, add the following:

SEC. . TAXPAYER DEBT BUY-DOWN ACT.

(a) SHORT TITLE.—This section may be cited as the "Taxpayer Debt Buy-Down Act".

(b) DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.—

(1) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT.

"Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

"(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

"(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term 'adjusted income tax liability' means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund)."

(2) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation for reduction of public debt."

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(c) PUBLIC DEBT REDUCTION TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (Relating to trust fund code) is amended by adding at the end the following section:

"SEC. 9511. PUBLIC DEBT REDUCTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Debt Reduction Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

"(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be available only for purposes of paying at maturity, or to redeem or buy before maturity, any obligation of the Federal Government included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from such Trust Fund shall be canceled and retired and may not be reissued."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9511. Public Debt Reduction Trust Fund."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(d) TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.—

(1) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

"SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

"(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session (other than the One Hundred Second Congress), and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the beginning of that session of Congress, as estimated by the Department of the Treasury on May 1 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257, except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequesters) and (2) the net deficit change that has resulted from direct spending legislation.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligational authority reduced under this section shall be done in a manner that makes such reductions permanent.

"(2) EXEMPT ACCOUNT.—No order issued under this part may—

"(A) reduce benefits payable the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

"(B) reduce payments for net interest (all of major functional category 900); or

"(C) make any reduction in the following accounts;

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

"National Credit Union Administration, Credit Union Share Insurance Fund; or

"Resolution Trust Corporation.".

(2) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in subsection (a), by inserting before the item relating to August 10 the following:

"May 1 . . . Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue Code of 1986.";

(B) in subsection (d)(1), by inserting ", and sequestration to reduce the public debt,";

(C) in subsection (d), by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

"(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

"(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b)."; and

(D) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on May 1.".

(3) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this subsection. The amendments made by this subsection shall cease to have any effect after the first fiscal year during which there is no public debt.

Mr. SMITH. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3162 TO AMENDMENT NO. 3161

Mr. SMITH. Mr. President, I send a second-degree 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 New Hampshire [Mr. SMITH] proposes an amendment 3162 to 3161.

Mr. SMITH. 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:

Beginning on page 1, line 3, of the pending amendment, strike all after the word "taxpayer" and insert in lieu thereof the following:

DEBT BUY-DOWN ACT.

(a) SHORT TITLE.—This section may be cited as the "Taxpayer Debt Buy-Down Act".

(b) DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.—

(1) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT.

"Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

"(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

"(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term 'adjusted income tax liability' means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund)."

(2) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation for reduction of public debt."

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(e) PUBLIC DEBT REDUCTION TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (Relating to trust fund code) is amended by adding at the end the following section:

"SEC. 9511. PUBLIC DEBT REDUCTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Debt Reduction Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

"(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be available only for purposes of paying at maturity, or to redeem or buy before maturity, any obligation of the Federal Government included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from such Trust Fund shall be canceled and retired and may not be reissued."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9511. Public Debt Reduction Trust Fund."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(d) TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.—

(1) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

"SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

"(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session (other than the One Hundred Second Congress), and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the beginning of that session of Congress, as estimated by the Department of the Treasury on May 2 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257, except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequesters) and (2) the net deficit change that has resulted from direct spending legislation.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligational authority reduced under this section shall be done in a manner that makes such reductions permanent.

"(2) EXEMPT ACCOUNTS.—No order issued under this part may—

"(A) reduce benefits payable the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

"(B) reduce payments for net interest (all of major functional category 900); or

"(C) make any reduction in the following accounts:

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

"National Credit Union Administration, Credit Union Share Insurance Fund; or

"Resolution Trust Corporation.".

(2) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in subsection (a), by inserting before the item relating to August 10 the following:

"May — Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue Code of 1986.";

(B) in subsection (d)(1), by inserting ", and sequestration to reduce the public debt,";

(C) in subsection (d), by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

"(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

"(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b)."; and

(D) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on May 2.".

(3) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this subsection. The amendments made by this subsection shall cease to have any effect after the first fiscal year during which there is no public debt.

Mr. SMITH. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Mr. President, the Senator from Arizona is interested in offering an amendment that I talked to the chairman about. I understand the Senator from New Hampshire is not going to stay here and debate this amendment at this time.

So I hope, that whatever we proceed to next, it would be considered to have my amendment brought up.

Mr. BENTSEN. Mr. President, I agree with the Senator on his amendment insofar as offering it in this sequence. If he is not prepared to stay here and debate that, we could have one intervening amendment during that process, and once that was disposed of, he would then be privileged to continue his amendment. I am certainly prepared to honor that.

Because of the number of amendments we have, there is no way we are going to finish this bill. We can overload it if people continue to offer their amendments. I know how strongly they feel about their individual amendments. But we have so many things in this piece of legislation that are important to all of us, to the American people, that I would urge restraint in that regard.

One of the other things of course that we are asking for is a limitation on the time of debate. I would like to ask the proponent of the legislation, Senator SMITH, if I could get his attention, for a limitation on time. Everyone has been quite good at that up to this point.

Mr. SMITH. I thank Senator BENTSEN for his courtesy in terms of trying to work out an arrangement. As he knows, I have a hearing right now that I am vice chairman of and I need to go back to. I appreciate his courtesy.

I am very willing to have a time limitation on the amendment. There have been three or four individuals on our side who have asked for time to speak. I indicated, I believe yesterday, that 1½ hours on our side would be sufficient.

I do not know what the Senator has in mind. That would be a 3-hour time limit.

Mr. BENTSEN. I say to my friend, I think the longest that we have had to do thus far is 2 hours overall. I hope that the Senator could agree to 2 hours on this amendment in total. We have so many of them. It would be helpful if he could.

Mr. SMITH. Without my 2½—I do not need that much time. But there are three or four members who have expressed an interest. I would be happy to have 2½, and would be more than happy to yield. As the Senator knows, some Members are very reluctant to give a time limit. I am happy to have 2½ hours.

Mr. BENTSEN. I agree with that. I checked with the manager of the minority. He is agreeable to it.

Mr. President, I ask unanimous consent that we approve a limitation on time of 2½ hours on the amendment offered, and that be equally divided with the time charged to the proponent of the legislation and to me as manager of the opposition.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI addressed the Chair.

Mr. BENTSEN. If I may, I have not yet yielded the floor. That would include both amendments and no others being offered in the second degree.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. Does the Senator wish to object?

Mr. DECONCINI. I am not sure that I will object, but I would like to talk about it. I would like to ask the distinguished chairman if I may proceed after this unanimous consent on my amendment?

Mr. SMITH. I have no objection.

Mr. BENTSEN. Is the Senator ready to yield the floor for that purpose?

Mr. SMITH. Yes. I indicate that to the Senator from Arizona and would be happy to yield at this time.

Mr. BENTSEN. Mr. President, I would like very much to accommodate the Senator from Arizona. My understanding was he is prepared to agree to a time limit of no longer than 1 hour, equally divided?

Mr. DECONCINI. The chairman is correct.

Mr. BENTSEN. I ask unanimous consent that we have first- and second-degree amendments—no second-degree amendments, and that we have a limitation of time of 1 hour, to be equally divided, with half of that responsibility for utilization to the proponent of the amendment and the other half to the Senator from Texas.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Arkansas object?

Mr. BUMPERS. Mr. President, reserving the right to object, I have an amendment. I just heard the tail end of this. Was the Senator lining up a series of amendments with time agreements?

Mr. BENTSEN. Only on this amendment that is before us now or about to be before us, and we had already had an agreement on the other.

Mr. BUMPERS. Could the Senator tell us, are we going back and forth with these amendments? One on that side, one on this side?

Mr. BENTSEN. We are doing our utmost to do that. To the extent we can accommodate the alternating between the Republican and the Democratic side, we will do that.

Mr. BUMPERS. The only thing we are getting consent on agreement at this time is the amendment of the Senator from Arizona and nothing further than that?

Mr. BENTSEN. That is correct.

The PRESIDING OFFICER. Is there objection to the unanimous consent propounded by the Senator from Texas as modified?

Without objection, it is so ordered.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the amendment proposed by the Senator from New Hampshire is temporarily set aside.

The Chair recognizes the Senator from Arizona to offer an amendment.

AMENDMENT NO. 3163

(Purpose: To provide a credit against tax for employers who provide on-site day-care facilities for dependents of their employees, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Arizona [Mr. DECONCINI], for himself and Mr. DOMENICI, proposes an amendment numbered 3163.

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

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

The amendment is as follows:

At the end of title VIII, insert:

SEC. . ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CERTAIN ON-SITE DAY-CARE FACILITIES.

(a) ALLOWANCE OF CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by section 8205, is amended by adding at the end thereof the following new section:

"SEC. 45A. EMPLOYER ON-SITE DAY-CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site day-care facility credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified investment in property placed in service during such taxable year as part of a qualified day-care facility.

"(b) LIMITATION.—The credit allowable under subsection (a) with respect to any qualified day-care facility shall not exceed $150,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED INVESTMENT.—The term 'qualified investment' means the amount paid or incurred to acquire, construct, rehabilitate, or expand property—

"(A) which is to be used as part of a qualified day-care facility, and

"(B) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable.

Such term includes only amounts properly chargeable to capital account.

"(2) QUALIFIED DAY-CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified day-care facility' means a facility—

"(i) operated by an employer to provide dependent care assistance for enrollees, at least 30 percent of whom are dependents of employees of employers to which a credit under subsection (a) with respect to the facility is allowable,

"(ii) the principal use of which is to provide dependent care assistance described in clause (i),

"(iii) located on the premises of such employer,

"(iv) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a day-care facility, and

"(v) the use of which (or the eligibility to use) does not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

"(B) MULTIPLE EMPLOYERS.—With respect to a facility jointly operated by more than 1 employer, the term 'qualified day-care facility' shall include any facility located on the premises of 1 employer and within a reasonable distance from the premises of the other employers.

"(d) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

"(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified day-care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified day-care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

"(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) NO DOUBLE BENEFIT.—

"(1) REDUCTION IN BASIS.—For purposes of this subtitle—

"(A) IN GENERAL.—If a credit is determined under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

"(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1996."

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b), as amended by section 8205, is amended—

(A) by striking "plus" at the end of paragraph (8),

(B) by striking the period at the end of paragraph (9), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(10) the employer on-site day-care facility credit determined under section 45."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 45A. Employer on-site day-care facility credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on and after the date of the enactment of this Act.

SEC. . DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (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) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—To the extent that the amount of employee renumeration for any covered employee exceeds $1,000,000 for the taxable year, no deduction shall be allowed under this chapter for an amount equal to 25 percent of the amount of such excess.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS.—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

Mr. DECONCINI. Mr. President, I want to thank the distinguished chairman and the ranking member, Senator BENTSEN and Senator PACKWOOD, for permitting me to proceed at this time due to scheduling problems that I have with a conference in the Appropriations Committee starting this afternoon.

I realize, Mr. President, the magnitude of the bill before us, also the severity of the time restraints in trying to end this bill, get to conference, and hopefully pass a meaningful tax bill

that will handle many of the things the President wants, including enterprise zones, and many of the extensions that are necessary for the normal course of business to continue. This is why I have entered into a time agreement, and hopefully we can dispose of this amendment in even a shorter period of time.

Mr. President, the Senate just overrode the President's veto on the family leave bill. Indeed, I am very pleased we did that. Of course, I think that demonstrates that this body is committed to family values to the extent that it can be, short of unanimous consent, with 68 Members agreeing that this indeed is a national policy and should be a national policy. This legislation does not put an excess burden on the business community because there is no mandated cost that has to be paid while employees are on family leave. The only mandate is that their job has to be there when they come back.

Mr. President, in the spirit of doing things for families, this amendment is being offered.

In 1990, the Congress passed the Child Care Development Block Grant Program, which helps low-income parents afford child care. It also increases the number of available child care slots, and seeks to improve the quality of child care throughout the Nation.

Mr. President, this is the first major step, from the Federal level, to do something about child care. It is a landmark act, but it provides no incentives for businesses to offer child care services to their employees.

The measure before us today encourages private sector involvement by offering employers a tax credit, a one-time only tax credit, to provide on-site or near-site child care for the employees of that business.

We are a country that has almost 6 million employers, 136,000 of which have 100 or more employees. Of that number, only about 5,600 employers provide some kind of child care support to their employees, mostly in the form of child care information and referrals. Only about 1,400 corporations fund on-site or near-site child care facilities for their employees.

The amendment that is before us would provide a one-time only—I impress that upon the body—a one-time tax credit of up to 50 percent, with a maximum limit of $150,000, for employers to provide on-site or near-site child care for the children of their employees. The credit could be used for expenses related to the acquisition, construction, rehabilitation, or expansion of an on-site or near-site child care center.

The U.S. Government would recapture the cost, on a reducing scale, if the facility does not operate for a period of at least 10 years as a child care center.

I have a chart here to demonstrate what the recapture would be in the event this amendment becomes law. If employers meet the full 10 years, they get the full $150,000, or 50 percent of the cost of the facility. If they do not, this chart demonstrates the rate of recapture. Employers have to go 3 years to get any of the credit. So a company must commit itself to providing child care for at least a 3-year period. After that, the credit is reduced accordingly should the facility stop operating as a child care center.

This amendment stipulates that at least 30 percent of the children enrolled must be dependents of the company's employees. The center must be open to the children of all employees, regardless of their income bracket; the facility must operate in compliance with the State laws and regulations of a licensed day care center; and in the case of multiple employers, the facility must be located on the premises of one of the employers and within a reasonable distance from the premises of the other employers.

Why do we need an employer-sponsored child care tax credit? Well, even with the enactment of the 1990 child care legislation, there is an urgent need in this country for more child care availability. Although we have no hard data on the number of child care slots available in the country today, a 1990 children's defense fund survey found that America's licensed child care centers have room for 3.8 million children.

Five times that number of children under 6 years of age have mothers who work. Currently, over 58 percent of America's mothers with children under 6 are in the work force. That number is projected to increase significantly in this decade, and so are the number of children who need child care.

Harry L. Freeman, executive vice president of the American Express Co., said this about employer-sponsored child care:

> American Express is involved because the child care problems in America have reached crisis proportions. Corporations cannot ignore their responsibility, not if they want to attract and retain productive employees, not if they want to do business in economically healthy communities.
>
> The private sector must operate as a partner with the public sector to see to it that the quality and supply of child care meet the growing needs of our Nation.

Here is one of the most successful corporations in America that decided to offer child care without a tax credit. Some may say, well, why put a tax credit in? Well, not all companies have really seen the light, as the American Express Co. has. I think a tax credit will turn on that light, will open that door and invite employers to look at what is good for themselves, for their employees, and certainly for the children.

U.S. businesses that offer child care services all agree with Mr. Freeman's statement that child care is good for America, good for their company, good for competition, and good for the children of this country. In a survey of 415 businesses, most of which offered on-site or near-site child care, the companies overwhelmingly reported that their child care services provided tangible, corporate payoffs.

This chart indicates how well employer-supported child care pays off. Sixty-five percent of the companies reported that child care had a positive effect on turnover; 53 percent reported it had a positive effect on absenteeism; 85 percent reported a positive impact on recruitment; 90 percent reported it had a positive effect on morale; 49 percent reported child care has a positive impact on productivity.

This translates into a cost savings for companies. In the most exhaustive cost-benefit study ever conducted on a corporate on-site child care center, Union Bank in Monterey Park, CA, reported an estimated savings of more than $4 for every $3 spent in the first year of its child care program.

Mr. President, budget constraints require that we find an offset for any amendment. The Joint Tax Committee estimates that my provision will cost $500 million over 6 years. Since the benefit cost to corporations, I believe it is crucial that we seek an offset from the corporate side of the tax equation. When I offered this amendment in March of this year, I sought to increase the minimum corporate tax by three-tenths of 1 percent.

Mr. President, you would have thought I had suggested the end of capitalism from the reaction I received, and it did not pass. This time, I am seeking an alternative solution to offset my provision.

The tax bill that passed earlier this year and was vetoed by the President, H.R. 4210, included a provision passed by both Houses to cap the deductibility of executive compensation in excess of $1 million, because this provision raises more revenue than needed for my amendment, I will alter that proposal slightly by simply allowing the deductibility of only 75 percent of executive compensation in excess of $1 million. Given the support of this provision by the body earlier this year, I hope that the amendment will be accepted, and I am prepared to go to a vote if the chairman and the ranking member feel otherwise.

Mr. President, I urge my colleagues to support this amendment. I hope the managers will accept it. It is a vote for wise business investment and a vote for investment in our children.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Texas [Mr. BENTSEN].

Mr. BENTSEN. I yield 7 minutes to myself.

The PRESIDING OFFICER. The Chair recognizes the Senator accordingly.

Mr. BENTSEN. Mr. President, I agree with my colleague from Arizona concerning the interest in child care and dependent care. That is why I have always supported a credit for that purpose and, also, an exclusion for employer-provided facilities in that regard.

What you are facing today is both parents are in the workplace more than ever before. Mom is a part of that work force. They are trying to make both ends meet to meet the mortgage payment, the grocery bills, the medical bills, with the mother trying to make that difference to keep them solvent.

But in supporting those things, already we are talking about $3 billion a year that we are spending in that regard.

What we are seeing in this part of the underlying amendment, apart from the amendment, is additional funds that are made available for working families; doing that with the simplification of the earned income tax credit, trying to get the funds down to some of the lower income people that are having the toughest time, where both parents are working, where you have 40 percent loss in discretionary time and that means less time for parenting and all attendant problems that result from that and all the more need for day care and day care help. What we put in this piece of legislation now helps those working families in that regard.

By contrast, the amendment by the distinguished Senator from Arizona is advocating something that is not targeted to middle-income or to lower income families who have the toughest problem in this regard. Instead, that subsidy would be available to any employee. In addition, I think a 50-percent tax credit is extremely generous in these times of outlandish budget deficits. I really have to question whether we can really afford a new, very generous subsidy which is not targeted to those who really need assistance. Therefore, at the proper time I will be moving to table this amendment.

I share my colleagues' concern about executive compensation, too often not correlated with performance in that particular corporation. Some of these pay levels are really quite extraordinary.

The problem of executive pay points to the larger issue. American corporations are too often managed by executives who are not directly accountable to shareholders and workers but to directors who they typically select themselves. And that lack of accountability makes American companies insular and less competitive internationally. So the committee has been deeply concerned about that.

Indeed, the March bill included a provision that restricted the deductibility of compensation over $1 million, and we continue to explore ways to try to address that kind of concern so the stockholders are better informed and have more influence on that type of decision. The Securities and Exchange Commission is reviewing that process, trying to make recommendations on it.

Mr. President, I am going to yield the floor and retain the remainder of my time. I have to appear before another committee. My distinguished friend, the Senator from Montana, will be managing this on our side.

The PRESIDING OFFICER. The Senator's time is reserved.

Who yields time?

The Chair recognizes the Senator from Oregon [Mr. PACKWOOD].

Mr. PACKWOOD. Mr. President, will the Senator yield me 5 minutes?

Mr. BENTSEN. I yield.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon [Mr. PACKWOOD].

Mr. PACKWOOD. Mr. President, I join the chairman in opposition to this amendment for a variety of reasons, but as the chairman said last night, as we start down the road and load this down, if we are going to have any bill at all, we are going to have to turn down most of the amendments that come up in this particular amendment.

While I agree with the chairman on his question as to whether a tax credit of this generosity, untargeted, will achieve what we want for the amount of money that it will cost, I also have misgivings about an executive compensation cap because of the effect it has on high-technology, new startup companies, many of which, frankly, we have in Oregon.

Normally, when you think of wages or compensation, you think of a $1 or $2 or $3 million salary, but most new high-technology companies are venture capital companies where somebody is willing to leave Hewlett-Packard or Intel or some other company at age 35, 36, or 37 where they have a good job as an engineer or analyst and go off into a new company.

You do not start out with a high salary. Nobody does. What you do is take stock options and hope the companies make it. Most of them do not. For every one or two that make it, there are 10 or 12 that have the same opportunity at the start, but, for whatever reason, they do not make it. The people who took stock options received nothing other than a modest salary while working there.

For the one or two who do well, who come up with a product that fits the niche that the market wants at some stage, 3 or 5 or 7 or 11 years down the road, some of these officers exercise their stock option, and in that year they have a high compensation because they sold their stock.

But this is the very tool that the newest, brightest, and ablest American industries on the cutting edge of technology are using to attract people. They cannot afford to take an engineer away or a vice president away from an established company and pay them a high salary. They cannot pay them as much as they were making at the former company. But they can dangle in front of them an opportunity and a risk and say, "Come along, and if with your talent and knowledge you help make this go, there will be a reward at the end of the process." This amendment hits at that very situation, and for that reason I am going to join the chairman in opposition to it.

I understand the ire of the public that is caused by high compensations. But I do not want to throw the baby out with the bath water, and I do not want to deter these new startup companies who make it on 35- or 36-year-old engineers who may make no more than $30,000 or $40,000 a year when they start. They hope they will make a lot of money when they are 50 or 55, but most of them do not. A few of them do. This bill will deter the initiative that has been the key for most of the major startup new companies in America.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Mr. President, I yield myself 5 minutes.

What this amendment really does is set up a choice between helping rich people or helping children. This amendment says that the child care center must be open to the children of all employees, regardless of their income bracket. Today we subsidize companies, deduct multi-million-dollar salaries. We deduct a $5.9 million salary as a cost of business. Now we understand the importance of being able to deduct salaries and expenses of a legitimate business, but does this not get a little bit out of hand when a company can deduct a $5.8 million salary plus $9.9 million in stock grants from their income before they pay income tax.

We are doing something today to help children. We are saying Mr. Employer and Mr. CEO, you can only deduct 75 percent above the first million dollars of executive compensation. Take this example of $14.7 million in compensation—is it not a shame that these executives would only get a 75 percent deduction on their income tax? And where would that 25 percent go? That 25 percent would go to help families—it would go to provide child care on the premises for the very employees who work for these fine people.

I have nothing against those salaries. That is up to the companies to make that decision, and I am sure these executives are worth it and may be worth more. But what is the value of children in the workplace and the confidence

that parents would have that their children are safe in a regulated, child care center which is meeting the State laws?

To do this, we are asking these top executives and their companies to forego a small amount of the deductibility of salaries over $1 million. Is that asking too much? Is that not targeted to working people? I think it is clear that it is. Just consider, increases in inflation of adjusted compensation between 1990 and 1991 for U.S. executives, was 21 percent. For the workers of America, it was 2 percent.

Are we asking too much that we cannot deduct all of $14.7 million of executive compensation? Or, in the case if ITT, that only 75 percent of $7.6 million, can be deducted? With the first million, executives get a full deduction and only 75 percent after the first million.

Look at this chart and those salaries. Those are hardworking people. I am sure they earn every dime, or, I suspect they earn every dime, every dollar, every million dollars they make. Can the company not give us something in the best interests of children?

Workers compensation as a percentage of executive compensation varies in many industrialized countries. Would you like to know what it is in the United States? It is only 4.9. That is the percentage of workers compensation to executive compensation. In Canada, it is 8.5. In Japan, it is 8.7. In France, it is 9.4. In Germany, it is 11.8. These countries do pretty well economically, as does the United States, but they do not pay their executives as much in comparison to what the workers get.

I am not saying they have to change that. I am only saying, let us give the employees a chance and their children a chance by modifying the amount of deductibility.

Mr. President, this is a vote on children. That is what it is. It is an easy vote in terms of what is right and what is good for this country.

I urge my colleagues to vote against the motion to table, if that is what happens to this amendment.

The PRESIDING OFFICER. The Senator's 5 minutes have expired. Who yields time?

Mr. BAUCUS. Mr. President, might I ask how much time remains on each side?

The PRESIDING OFFICER. The Senator from Montana controls 22 minutes and 24 seconds; the Senator from Arizona controls 12 minutes and 23 seconds.

Mr. BAUCUS. Mr. President, I yield myself such time as I may consume.

Mr. President, I appreciate the interest and the concerns of the Senator from Arizona. This is not the time for us to try to resolve the question of child care compensation or executive compensation.

This is the first time we have seen this amendment. This is a complicated issue.

I am quite convinced this next year that, frankly, Governor Clinton will be elected President. And I am sure the Senator from Arizona will be part of efforts in the next Congress to address American competitiveness, part of which is child care compensation, so child care is adequately provided for, in addition to executive compensation.

These are extraordinarily complicated issues. It does not make much sense for us here on the floor, in a case of first impression, to try to enact this amendment because it is so complicated.

In addition, we already provide $3 billion of Federal funds for this issue. That is the dependent care tax credit. An exclusion for employer-provided dependent care already is $3 billion a year. These are dollars that go to child care in our country. We are already providing for child care.

I do not think it makes sense to add another amendment which we know virtually nothing about. We do not know the consequences it will have, certainly not at this time.

For those reasons, I strongly urge the Senate to reject the amendment by the Senator from Arizona at this point.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. I reserve whatever time I might have remaining.

The PRESIDING OFFICER. The time is reserved.

Who yields time?

If neither side yields time, time will be charged equally against both sides.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. 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. BAUCUS. Mr. President, I again suggest the absence of a quorum and ask unanimous consent that the time be equally charged against both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, the time will be charge equally.

The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BENTSEN. Mr. President, I would like to ask the proponent of the amendment, the distinguished Senator from Arizona, does he require more time?

Mr. DeCONCINI. Mr. President, I will take 1 minute and then I will be glad to yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DeCONCINI. Mr. President, the bottom line on this amendment is, do we continue to give corporations a full 100-percent deduction of top salaries? As indicated on this chart, one CEO, for example makes, $5.8 million, plus stocks, for a total of $15.7 million. Do we continue to give a 100-percent deduction on their income tax for those salaries, or do we adopt something to help our children? Contrary to what the distinguished chairman said, my amendment is targeted to all workers, and most employers have more low-income workers than they do high-income workers. To pay for this incentive, what do we do? We allow the deductibility of only 75 percent of executive compensation in excess of $1 million. Only 75 percent may be deducted.

The irony, Mr. President, is that this provision was in the last tax bill that we had. It was a good idea then. But we know what happens. These people have powerful lobbies and they say, oh, you are going to kill us. My goodness sakes, we are a high-technology industry; we will not be able to compete. Under my amendment, these companies can still deduct salaries up to $1 million. I do not know how many new high-technology industries pay salaries above that. But even if they pay salaries above $1 million, is not a 75-percent deduction reasonable? I think the answer is "yes."

The vote is, do you want to do something for children and pay for it by limiting not the salary but only the tax deduction above $1 million in compensation?

The vote should be clear. I hope my colleagues will vote against tabling the amendment.

If the Senator from Texas is prepared to yield back his time, I am prepared to go to a vote.

Mr. DURENBERGER. Mr. President, I rise to speak in opposition to the amendment offered by the distinguished Senator from Arizona [Mr. DeCONCINI] and I will vote to table his amendment.

Many companies are currently offering their employees on-site day care. Both the House and Senate provide such facilities and there is a very long waiting list to get in. In fact, as of today, 84 children are waiting to get in the Senate day care center and more than 100 are waiting in the House.

Why does the Congress and why do many companies provide such facilities? They do so because in the economy of the 1990's, women and men who need to work to make ends meet, also want to raise families. And day care is

a fundamental need that these families have.

In the Senate we have learned the same thing that companies have learned. On-site day care improves employee morale and encourages employee loyalty. Every company in America should learn this lesson. More and more will be adding such facilities to maintain a highly skilled stable work force.

So I ask the question, Mr. President, why do we have to provide a tax subsidy—especially a 50-percent tax subsidy—to encourage companies to do something that is already in their self-interest?

Mr. President, in 1986 we made a fundamental decision about the role the Tax Code should play in economic decisionmaking. We decided that the Tax Code should play as minimal a role in economic decisionmaking as possible. We repealed the investment tax credit and told corporate America: If you buy a new computer, do so because it makes sense for your company; not because the Tax Code gives you a tax break. If you build a new plant, do so because the market justifies such an expansion; not because the Tax Code gives you a tax break.

The same holds true in this case. Companies will make the decision to add a day care center on-site if they want to maintain a stable, high-skilled work force. We do not need to again be cluttering the Tax Code with special tax breaks for everyone's favorite investment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I am prepared to yield back the remainder of my time.

Mr. DECONCINI. I yield back the remainder of my time.

Mr. BENTSEN. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?.

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion to lay on the table amendment No. 3163. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from California [Mr. SEYMOUR], is necessarily absent.

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

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 233 Leg.]

YEAS—50

Baucus	Dodd	Mitchell
Bentsen	Dole	Moynihan
Boren	Durenberger	Packwood
Bradley	Ford	Pryor
Breaux	Garn	Reid
Brown	Graham	Roth
Bryan	Gramm	Rudman
Bumpers	Hatch	Sanford
Burns	Hatfield	Shelby
Chafee	Heflin	Simpson
Coats	Helms	Smith
Cochran	Johnston	Stevens
Cohen	Kassebaum	Symms
Craig	Lieberman	Thurmond
Danforth	Lott	Wallop
Daschle	Lugar	Warner
Dixon	Mack	

NAYS—46

Adams	Grassley	Mikulski
Akaka	Harkin	Murkowski
Biden	Hollings	Nickles
Bingaman	Inouye	Nunn
Bond	Jeffords	Pell
Burdick, Jocelyn	Kasten	Pressler
Byrd	Kennedy	Riegle
Conrad	Kerrey	Robb
Cranston	Kerry	Sarbanes
D'Amato	Kohl	Sasser
DeConcini	Lautenberg	Simon
Domenici	Leahy	Specter
Exon	Levin	Wellstone
Fowler	McCain	Wirth
Glenn	McConnell	
Gorton	Metzenbaum	

NOT VOTING—4

Gore	Seymour
Rockefeller	Wofford

So the motion to lay on the table the amendment (No. 3163) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The pending business is the Smith amendment on which there remains 2½ hours of debate, equally divided and controlled by the Senator from New Hampshire [Mr. SMITH] and the Senator from Texas, the manager of the bill, Mr. BENTSEN.

Who seeks recognition?

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BRADLEY. Mr. President, George Bernard Shaw once said, "A government which robs Peter to pay Paul could always depend on the support of Paul."

Mr. President, it seems to me that Paul is the only one who can really love this tax bill. Unfortunately, there are too many Petes in this bill and not enough Pauls. The inevitable result of Congress trying to be smarter than the markets is a tax bill which benefits narrow categories of taxpayers at the expense of everybody else.

This bill has been promoted as an urban aid bill, but for an urban aid bill, surprisingly little goes to the poor in our inner cities. I support the chairman's enterprise zone, and I agree that it is an idea that we should try, but it is important to remember that the primary beneficiaries of enterprise zone tax breaks are the holders of capital and the owners of businesses, not the zone residents. I commend the bill's income security spending package. The $3 billion which is spent on substance abuse, community works, and job training programs is only a drop in the bucket, and the urban spending amounts to $2.2 million per city and $58,000 per social program.

It is hard to look at this scaled-down response and call it an urban aid bill. To truly change the situation of those living in urban blight, we need to invest significant national resources in transportation, in crime prevention, in public infrastructure, in education, in job training, and human capital. But this is a $30 billion bill. Where is this money going? The largest expenditure in the bill is the IRA proposal, originally $7.7 billion, now $6.2 billion. But the primary beneficiaries of this proposal are wealthy taxpayers, the top five of American income earners. Yet, supporters of the bill note that this provision is paid for by permanently extending the Pease and Pep provisions, the limitations on itemized deductions, and personal exemptions. I question the wisdom of paying for tax breaks with revenues that are already in our current tax liability. These are not new revenues. We cannot let a tax expire, pass it again and call it new money.

This whole exercise with IRA's and Pease and Peps simply means that we are raising taxes on high-income taxpayers in order to shovel the money right back to high-income taxpayers with a new tax break; in other words, we are robbing Paul to pay Peter, or should I say, no, we are robbing Paul to pay Paul.

Real estate developers and brokers are big winners in this bill. They get $2.5 billion in passive loss relief. But it is important to realize what a narrow class of taxpayers we are really talking about. The passive loss relief goes only to developers who spend more than half their time dealing with real property trades or businesses, and we already provide a $25,000 passive loss exclusion for such taxpayers with gross incomes of less than $100,000. A number of other taxpayers will already get relief through new lax Treasury regulations under the passive loss provisions in law now.

So whoever is left—and there cannot be too many of them—they reap and divvy up $2.5 billion in this bill.

It does not end there.

The bill also provides section 108 relief to real estate investors. People who made bad bets on real estate deals in the 1980's are allowed to defer their income when debt secured by real property is written down.

Note that we already provide section 108 relief in the case of insolvency. That is already in the law. That means we are helping out limited partners in real estate deals who are still solvent. But the claim is made that these tax breaks are paid for in the bill.

The bill's supporters point to a provision that lengthens the depreciation period for real property. There is only one problem with that provision. Those footing the bill are not the same people as those who get the tax breaks. Lengthening the depreciation period for real property means that every business that holds commercial property in an active trade or business, gets hit. These are not the developers or brokers who will get passive loss relief. No. No. These are not the limited partners in real estate deals who will get the section 108 relief. No. No. This is corporate America.

The bill also provides $1.3 billion in alternative minimum tax relief to large corporations. But this is not broad corporate tax relief. It simply allows capital intensive producers to retain more of the tax benefit of accelerated depreciation.

Many segments of industry have been burdened with the AMT. I have to question why this group should be treated better than others.

Mr. President, the list of winners in this bill goes on and on and on, each group narrower than the last, each group reaping benefits at the expense of all of the rest of the taxpayers. It includes, for example, in addition to the section 108 winners, the passive loss winners, and the IRA winners, in addition to those winners in this bill are custom gunsmiths, cotton warehouses, restaurants, aircraft manufacturers, housing cooperatives, ferryboat owners.

Mr. President, there are some losers. Losers include security houses, relocated employees, and businesses paying estimated taxes.

When I look at this tax bill, I think of Walt Whitman, and I think what he once said could apply to this tax bill. He once said, "I am large. I contain multitudes."

And this tax bill contains a multitude of small provisions that benefit very narrow interests, raises taxes on others, and reduces the deficit zero.

Do you ever wonder about the deficit? Oh, the deficit, yes. We are raising $30 billion here. We could reduce the deficit $30 billion. But instead of doing that, we are giving a little bit to the section 108 winners, giving a little bit to the passive loss winners, giving a little bit to the IRA winners, custom gunsmiths, cotton warehouses, restaurants, aircraft manufacturers, housing cooperatives, ferry boat owners.

So we are sprinkling sugar over the horizon. Meanwhile, the national debt is still $4 trillion and the budget deficit is still $350 billion.

One of the reasons we are in such bad straits is we continue to pass new tax breaks without really paying for them fully. Yesterday, I talked about how within the 5-year window, narrowly construed maybe, we are OK. If you take an expiring tax provision and keep it going and say that is a new tax, under that logic you could sunset the tax in the fourth year of a 5-year agreement and then say you are not going to sunset it, continue it and under the budget agreement raise $700 billion. That is how we finance these in the 5-year period. In the outyear periods, we do not finance them at all. So you can have an explosion in the budget deficit.

At some point we are going to have to stop robbing Peter to pay Paul. At some point we are going to have to exercise some fiscal restraint and work on long-term solutions that will lead to more savings and investment. At some point we are going to have to stop dishing out tax breaks to this group and that group, and leave the rest of us paying higher taxes or the rest of us paying higher interest rates than we otherwise would have to pay because the deficit is that much bigger and the debt does not come down. It is a very simple proposition.

Mr. President, I hope that we will remember, when we look at this bill carefully under a microscope, the old saying, once again, of George Bernard Shaw: "A government which robs Peter to pay Paul can always depend on the support of Paul."

Unfortunately, there are a lot of Petes in this bill and not enough Pauls.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, in an effort to improve relations with Saddam Hussein, the administration ignored information about the dictator's moves to obtain nuclear weapons as it continued its massive aid program to Baghdad.

Even after invasion of Kuwait, the administration paid over one-half billion dollars to Middle Eastern banks that today appear to be financing sanctions busting activity benefiting Iraq.

PREWAR: HELPING IRAQ'S EFFORTS TO OBTAIN NUCLEAR WEAPONS

Yesterday, Congressman SAM GEJDENSON released documents showing that the administration knew in 1990 of Iraq's efforts to obtain nuclear weapons.

But there is evidence they may have known this information nearly a year earlier.

There is virtually no dispute that machine parts and equipment made in America helped Iraq in its quest to develop nuclear weapons.

But what is in dispute is what high administration officials knew and why they failed to stop the export of this equipment to Iraq.

The answer is: Administration officials would have been tougher if not for the secret order—signed by the President a mere 10 months before Iraq invaded Kuwait—that directed the enormous power of the United States toward helping Baghdad.

According to the press, President Bush's secret National Security Directive 26, NSD 26, was the green light that threw caution and good judgment to the wind.

It was a fateful step that many believe led us down the slippery slope towards war and the death of American sons and daughters on foreign soil.

Today, I am placing in the RECORD a declassified document that shows how powerless lower-level administration officials felt because of the NSD. And the memo predates Mr. GEJDENSON's material by 8 months.

What is incredible is that the memo's writer recommends the approval of export licenses for dual-use nuclear-related equipment—that is equipment that can be used for either nuclear or nonnuclear purposes—with the stipulation that Saddam Hussein promise not to use the equipment to build nuclear weapons.

Trusting Saddam Hussein to keep a promise not to divert this equipment to his nuclear program is like giving a pyromaniac gasoline and matches after he promises not to light a house on fire.

It does not take a rocket scientist, even back in November 1989, to know that Saddam Hussein was trying to develop a nuclear bomb and could not be trusted.

In fact, the Los Angeles Times reported on July 22, 1992, that the administration knew as early as September 1989 of Iraq's nuclear weapons program:

> The CIA warned Secretary of State James A. Baker III in a September 1989 top secret assessment that Iraq was developing a "nuclear weapons capability" and the agency identified the specific technology being sought by Baghdad, according to classified documents.

Later in the same story, the Times reports:

> Technology identified by the CIA [in the report to Baker] included high-speed cameras, oscilloscopes and sophisticated computers. Records show that the Administration allowed such technology to go to Iraq even after the warnings * * *.

If the report is true, then the administration was told one month before NSD 26 was signed and 2 months before the SNEC memo of Iraq's nuclear capability.

Because of the importance of this information, I am enclosing a copy of the Los Angeles Times article in the RECORD.

In fact, according to the June 1991 report "Licensing Mass Destruction; U.S. Exports to Iraq: 1985–1990" by the Wisconsin Project on Nuclear Arms Control:

Front companies for every known nuclear, chemical and missile site in Iraq bought American computers with total American computer exports exceeding $96 million.

The administration, even though it knew of Iraq's desire to build nuclear weapons, turned a blind eye when Baghdad began collecting the equipment it needed to achieve its dream.

TODAY: BREAKING THE EMBARGOES AGAINST IRAQ

It is already well established that the administration used taxpayer money to prop up Saddam Hussein.

But what I am here to tell you today is that even after invasion of Kuwait, the administration paid over one-half billion dollars to Middle Eastern banks that today appear to be financing sanctions busting activity benefiting Iraq.

Here is what we know.

At a time when Baghdad was financially devastated and strapped for cash, the administration guaranteed $5 billion in agricultural loans to prop up Saddam Hussein, helping him rebuild his war machine.

By getting these U.S.-backed loans, Hussein was able to spend his limited resources on items other than food—such as military weapons and machinery.

In fact, the State Department estimated that Hussein spent $10 to $20 billion in the 1980's on weapons of mass destruction.

By 1990, the United States was the only Nation guaranteeing medium-term loans to Baghdad because they feared that Iraq—heavily indebted after the end of the Iran-Iraq war—might default on the loans.

Default is just what Iraq did, when it refused to repay a substantial amount of money it owed to American and international banks.

Because the administration guaranteed the Iraqi debts, American taxpayers were left with a $1.9 billion bill.

Of that amount, American taxpayers paid nearly one-half billion dollars to cover Iraq's debt to the Gulf International Bank [GIB].

Until April 1992—after most of the United States payments had been made—the bank was owned by Iraq and six other Persian Gulf governments: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

U.S. payments came at a time when GIB was suffering from a substantial credit crunch, making it easier for it to resume lending. And information provided to the Senate Agriculture, Nutrition, and Forestry Committee by a private source suggests that loans by GIB money may be helping companies violate U.N. sanctions against Iraq. I am providing this information to the Office of Assets Control at their direct request.

The source—Kenneth Timmerman of Middle East Defense News—alleges that GIB financed the sanction-breaking activities of nine Jordan-based front companies currently working on behalf of Iraq.

Mr. Timmerman traveled to Jordan and personally interviewed officers of one of these companies—Computer and Communications Systems [CCS]. CCS officers told him that before the Persian Gulf war the company installed and serviced a large number of VAX and mini-VAX computers in Iraqi weapons plants. And a CCS director told Mr. Timmerman that CCS was engaged in active negotiations with U.S. companies to help them break into the Iraqi market once U.N. sanctions are lifted. According to Mr. Timmerman, CCS apparently helped Iraq procure spares and service computers that have been hidden from the U.N. Special Commission.

Mr. Timmerman also learned about a direct business contact between the Iraqi Government and GIB since the invasion of Kuwait. He believes that Iraq's Government-owned Rafidain Bank sent a telex to the Bahrain office of GIB just 3 days after the invasion of Kuwait. The telex reportedly instructed GIB to immediately convert all Iraqi deposits at the bank into Swiss francs and to remit the funds to the Central Bank of Jordan's account with the Zurich branch of the Union Bank of Switzerland.

If the information obtained by Mr. Timmerman is true, and if United States taxpayer payments to GIB helped the bank make the loans to the Jordanian-based companies, then it would appear that American money is helping to break the U.N. embargo against Iraq.

In addition, the administration should be aware of what appear to be additional sanctions violations. On November 20, 1991, the Reuters Library Report reported that GIB and the Arab Banking Corporation [ABC], a bank partially owned by Libya, were two of four banks that made a $30 million loan to the Arab Shipbuilding and Repair Yard to expand its operations in Bahrain. Owned by Iraq, Libya, Kuwait, and four other Gulf States, the Arab Shipbuilding and Repair Yard used the loan to purchase two floating docks from a firm in Florida at a cost of $29 million. These news accounts raise serious questions about whether GIB and ABC are complying with the U.N. sanctions against Iraq.

Yesterday, I sent a letter to R. Richard Newcomb, Director of the U.S. Treasury's Office of Foreign Assets Control, outlining the apparent sanctions violations of GIB and ABC. I am inserting both my letter to Mr. Newcomb and Mr. Timmerman's letter to the Senate Agriculture Committee staff into the CONGRESSIONAL RECORD.

If these reports are true, no further American money should be paid to GIB. Unfortunately, the administration has not verified what amounts, if any, are still owed to the bank.

Mr. President, because of administration policy, American taxpayers were forced to spend $1.9 billion for foreign aid to Saddam Hussein.

And—if Mr. Timmerman's reports are true—then American money may be permitting Middle Eastern banks to loan funds to sanctions busters assisting Iraq.

Mr. President, I ask unanimous consent that all of the material to which I have referred herein be printed in the RECORD.

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

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS,

November 21, 1989.

Memorandum To: OES/N– ——— S/NP– ——— T– ——— NEA/NGA– ———.

From: OES/NEC– ———.

Subject: SNEC Cases of Interest.

BACKGROUND

The November 18 meeting of the SNEC and the November 20, briefing on Iraq's nuclear program and the activities of state enterprises provided a thorough presentation of available information and Intelligence Community views on these matters. However, we are still left with no clear indication of how to proceed on the majority of cases currently before the SNEC.

POLICY

The problem is not that we lack a policy on Iraq; we have a policy. However, the policy has proven very hard to implement when considering proposed exports of dual-use commodities to ostensibly non-nuclear end users, particularly state enterprises.

SNEC policy for some years has been not to approve exports for Iraq's nuclear program except for very insignificant items for clearly benign purposes such nuclear medicine. However, at the same time, U.S. policy, as confirmed in NSD 26, has been to improve relations with Iraq, including trade, which means that exports of non-sensitive commodities to "clean" end users in Iraq should be encouraged. According to NEA/NGA, although U.S. policy precludes approval of Munitions Control licenses for Iraq, exports of dual use commodities for conventional military use may be approved.

Complicating factors in decision making include:

1. A presumption by the Intelligence Community and others that the Iraqi Government is interested in acquiring a nuclear explosive capability;

2. Evidence that Iraq is acquiring nuclear related equipment and materials without regard for immediate need;

3. The fact the state enterprises which are ordering substantial quantities of dual use equipment needed for post war reconstruction, such as, computers and machine tools, are involved in both military and civil projects;

4. Indications of at least some use of fronts for nuclear-related procurement.

5. The difficulty in successfully demarching other suppliers not to approve exports of dual use equipment to state enterprises and other ostensibly non-nuclear end users.

RECOMMENDATIONS

Notwithstanding the foregoing, we are prepared to recommend the following actions on

the below-listed currently pending dual use exports to Iraq. Proposed conditions are tailored to significance of export. Other agencies, particularly DOD, may not concur in the recommendations for approval, which would result in split decisions being reported to Commerce for resolution at a higher level.

——— for one 1 GHZ oscilloscope for Technical University Research Center, Iraq. Pending reply to State cable requesting end user info and DOC info on end use. Defer for reply to state telegram to Baghdad.

——— for three HP 9000 workstations to Nasser State Enterprise, Iraq. Deferred for CIA code word level briefing on Iraqi State enterprises and their connections with Iraqi nuclear program. Deny on foreign policy (not nuclear) grounds based on specific information linking this proposed export to a missile development project.

——— for one HP model 360 computer to Ministry of Industry and Military Industrialization, Iraq. End user is identified as of concern for missile and other military activities. End user directs all state enterprises. However, computer proposed for export is only a PC. Approve with license conditions of no nuclear use and no retransfer without prior consent & end user certificate on same points.

——— for two 3-axis turning machines to Saddam General Establishment. Approve subject to license conditions of no nuclear use and no retransfer without prior consent; end user certificate on same points and periodic reporting of status of equipment by exporter or exporter reps.

——— for one coordinate measuring system to Bader General Establishment, Iraq. Favorable end use check received from U.S. Embassy Baghdad. Approve subject to license conditions of no nuclear use and no retransfer without prior consent; end user certificate on same points and periodic reporting of status of equipment by exporter or exporter reps.

——— for one numerically controlled machine tool to Bader General Establishment, Iraq. Approve subject to license conditions of no nuclear use and no retransfer without prior consent; end user certificate on same points and periodic reporting of status of equipment by exporter or exporter reps.

——— application D015535 for re-export of one VAX 6320 and one MICROVAX II computers to Scientific Research Council, Iraq. Concerns have been raised because of possible nuclear-related procurement of items such as glove boxes. However this end user is responsible for universities and scientific institutions in Iraq, including such benign activities as astronomy. Moreover the computers proposed for export, though highly desirable VAX models, have rather low PDR ratings (300 for largest and 39 for the smaller system and workstations). Approve with license conditions of no nuclear end use and no retransfer without prior consent and end user certificate on same points.

——— for one CYBER 910B-400 series workstation to the Hutteen General Establishment, Iraq, for engineering applications. This is the low end of the CYBER mainframe line with a PDR of 318. Approve with license conditions of no nuclear use and no retransfer without prior consent & end user certificate on same points.

——— for two optical heads for cameras and timing lights to A.M. Daoud Research Center, Iraq, for work on projectile behavior and terminal ballistics. DOE review shows that speed of this equipment is appropriate for conventional artillery rounds but far too slow for nuclear applications. Approve with license conditions of no nuclear end use and no retransfer without prior consent and end user certificate on same points.

[From the Los Angeles Times, July 22, 1992]

BAKER WARNED ON TECHNOLOGY SALE TO IRAQ

(By Murray Waas and Douglas Frantz)

WASHINGTON.—The CIA warned Secretary of State James A. Baker III in a September, 1989, top-secret assessment that Iraq was developing a "nuclear weapons capability," and the agency identified the specific technology being sought by Baghdad, according to classified documents.

Nevertheless, a month later, Baker assured Iraq's foreign minister that the Bush Administration had no plans to tighten controls on technology exports to Iraq.

That November, Baker played a decisive role in approving an additional $1 billion in U.S. food aid for Baghdad—despite another warning that federal prosecutors were investigating allegations that Iraq may have used earlier aid to acquire nuclear-weapons technology.

The CIA analysis was one of numerous intelligence reports to Baker and other senior Bush Administration officials detailing the activities of Iraq's clandestine worldwide arms-procurement network, according to records obtained by The Times.

The newly disclosed documents demonstrate that the intelligence reports were transmitted to the highest levels of the Administration. Yet officials declined to impose restrictions or take other measures that might have slowed Iraq's efforts to develop a nuclear weapon.

The new documents also provide additional evidence of the extent of the Administration's knowledge of Iraq's arms procurement efforts in the years before the invasion of Kuwait.

State Department spokeswoman Margaret Tutwiler, traveling with Baker in the Middle East, declined to respond to questions about the CIA analysis.

"We are going to follow the same policy on this story as we have on the past ones, which is not to get into all the specifics or try to interpret documents that were made available." Tutwiler said. "Secretary Baker and others have talked about prewar policy. We've testifed on it; we've released documents publicly, and we've released them [documents] to the Congress."

Classified documents previously disclosed by The Times already have shown that the Administration was warned repeatedly, starting as early as 1985, by its own intelligence agencies that Iraq was developing nuclear, chemical and biological weapons, possibly with diverted U.S. technology.

Post-Persian Gulf War inspections by the United Nations have demonstrated that U.S. technology was used in Iraq's weapons programs. Allegations that U.S. food aid was diverted to buy weapons are still under federal investigation.

Paradoxically, at the start of the Gulf War, President Bush invoked Iraq's potential to develop and deploy nuclear weapons as one reason for launching the air war instead of continuing economic sanctions.

"We are determined to knock out Saddam Hussein's nuclear bomb potential," Bush told the nation in a televised address on Jan. 16, 1991.

Confronted with questions about prewar assistance to Iraq in recent weeks, the President has denied repeatedly and categorically that his Administration provided any help in Baghdad's drive to develop nuclear, chemical or biological weapons.

Classified records have shown that the Administration resisted efforts to curtail sales of sensitive technology to Iraq as late as May, 1990, two months before the invasion.

In the CIA assessment dated Sept. 3, 1989, Baker and other officials were informed that Iraq was developing a nuclear weapon to "counter perceived military threats from Israel and Iran." Iraq's front companies had "made extensive use of covert techniques in Western Europe" to obtain high-tech goods vital to its nuclear weapons program, the report said.

Technology identified by the CIA included high-speed cameras, oscilloscopes and sophisticated computers. Records show that the Administration allowed such technology to go to Iraq even after the warnings, continuing a policy begun as part of the Ronald Reagan Administration's attempt to influence Iraqi President Hussein.

On Oct. 6, 1989, Baker met with Iraqi Foreign Minister Tarik Aziz in Washington. Minutes of the meeting show that Baker stressed the Administration's desire for strong ties to Baghdad and said it opposed attempts by Congress to impose sanctions on Iraq.

"Regarding technology, the secretary admitted that the U.S. does have concerns about proliferation but they are worldwide concerns," the minutes said. "He suggested that we worked together on specific requests so the U.S. can understand Iraqi needs and objectives and Iraq can hear what concerns us."

At the meeting, Aziz raised concerns about alleged efforts by the United States to destabilize the Iraqi government. On Oct. 21, 1989, Baker sent a classified cable to Aziz in which he said that he has discussed the matter with Bush and that there was no such U.S. effort.

"Such an action would be completely contrary to the President's policy, which is to work to strengthen the relationship between the United States and Iraq whenever possible," according to a copy of the cable.

An examination of records of the interagency Administration group that reviews exports of technology with potential nuclear weapons uses found that substantial amounts of such goods were licensed for sale to Iraq.

Between 1985 and 1990, the Reagan and Bush administrations approved 410 licenses to Iraq for goods with potential nuclear applications, while disapproving 116, records show.

Congressional and federal investigators now say they have uncovered evidence that one element of Iraq's procurement network, a Cleveland machine-tool company called Matrix Churchill, obtained tens of millions of dollars in U.S. technology for Iraq's nuclear program.

Matrix Churchill was not shut down by the Customs Service until the month after Iraq's invasion of Kuwait despite intelligence reports dating back to the summer of 1989 that identified its British parent, also known as Matrix Churchill, as part of the worldwide procurement network.

Intelligence warnings also came as the Administration was considering new loan guarantees for Iraq.

"Baghdad has created a complex procurement network of holding companies in Western Europe to acquire technology for its chemical, biological, nuclear and ballistic missiles program," said a Nov. 6, 1989, secret CIA report naming Matrix Churchill and numerous other fronts.

Two days later, the Administration approved the additional $1 billion in loan guar-

antees for Iraq from the Commodity Credit Corp. over objectives of four federal agencies worried about Iraq's credit-worthiness and the allegations of aid diversion.

The approval followed personal lobbying by Baker and top aides. Records show that, along with the September CIA report, Baker also had received another classified report about that time that raised suspicions about possible diversion of U.S. aid.

The report said federal prosecutors were investigating "allegations of widespread and blatant "irregularities' in the CCC program for Iraq." Among the allegations was possible "diversion and transshipment of commodities outside Iraq" for arms purchases.

Three of Baker's top aides were warned that investigators believed "that diverted funds were used to procure nuclear related equipment" and that Matrix Churchill was "involved in supplying military hardware to Iraq."

The warnings continued. Two weeks later, a State Department memo said intelligence information indicated that Iraq was pursuing "a nuclear explosive capability" with the assistance of Iraq's clandestine network.

Although the memo warned that some U.S., high technology was diverted for Iraq's nuclear program, it argued that Administration policy was to "improve relations with Iraq, including trade, which means * * * exports of dual-use commodities for conventional military use may be approved." The memo also charged that licensing policy was holding back exports to Iraq.

In mid-February of 1990, U.S. diplomats in nine foreign capitals were instructed to express concerns about Iran's and Iraq's nuclear programs. The diplomats were to urge the "host governments not to provide either Iran or Iraq with 'plutonium or highly enriched uranium'" to make a bomb and, more important, were "cautioned against the export of so-called 'dual-use' items to the nuclear programs of Iran or Iraq."

But contrary to the advice given U.S. allies, senior Bush Administration officials continued to press for relaxation of U.S. export licenses that might assist Iraq's nuclear program.

In March, 1990, John Kelly, then an assistant secretary of state who also had received the September, 1989, CIA warning, complained that the interagency licensing policy was still holding up export licenses to Iraq. "We have explicit presidential authority for expanding trade with Iraq," Kelly said.

In March 27, 1990, U.S. and British customs agents thwarted an effort by Iraq to obtain American-made triggers for nuclear weapons.

Within days, a State Department official warned in a classified memo that the incident was "another indication that Iraq may be seeking to develop a nuclear weapons option. Although this does not appear to be a danger in the near term because Iraq lacks facilities to produce weapons-grade nuclear materials * * * it is important to try and prevent Iraq from acquiring sensitive technologies at an early stage."

A senior State Department official was being dispatched to France, West Germany, Belgium and other countries to brief foreign leaders on "Iraq's nuclear program and procurement activities" and argue for "the need to control exports of sensitive nuclear and missile technology to Iraq," according to the memo.

But in May and June of 1990, according to classified documents, the National Security Council rejected proposals by the Commerce Department to tighten the export licensing of U.S. technology to Iraq.

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, DC, September 23, 1992.

Mr. R. RICHARD NEWCOMB,
Director, Office of Foreign Assets Control, Department of Treasury, Washington, DC.

DEAR MR. NEWCOMB: On March 30, 1992, I wrote to the Secretary of Agriculture questioning the payment of $360 million to the Gulf International Bank. I raised questions about this transfer of funds because my information indicated that the Gulf International Bank was partially owned by the Government of Iraq. The Secretary responded that the payments to the Gulf International Bank were proper because the bank was not controlled by the Government of Iraq. The Secretary further referred any other questions on this matter to your office.

Committee Counsel and other staff met with you and members of your staff on August 28, 1992, to discuss the Office of Foreign Assets Control's decision to authorize these payments. During the meeting, several issues were raised about the Gulf International Bank. You agreed to provide the Committee with the relevant documents that addressed these issues. These materials have not been supplied to the Committee. Therefore, I am providing you with my concerns about these issues.

My concerns are based on the fact that the Iraqi Sanctions Regulations bar the transfer of assets to Iraqi entities and the export of U.S. assets that have the effect of conferring a direct or indirect benefit to Iraq.

In the meeting you indicated that the USDA payments to the Gulf International Bank were proper because the Office of Foreign Assets Control had determined that the bank was not an Iraqi entity, in spite of Iraq's partial ownership of the bank. The only documents that we have received conferring that status on the Gulf International Bank cite only the Kuwaiti Assets Control Regulations (Executive Order 12723, 12725), not the Iraqi regulations.

The Iraqi Sanctions Regulations state in section 570.101 that they are separate from any other regulations:

"(a) This part is separate from, and independent of, the other parts of this chapter. * * * No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part."

Further, the license issued by the Office of Foreign Assets Control was issued under the Iraqi Sanctions Regulations, not the Kuwaiti Assets Control Regulations. From a legal point of view, therefore, the decision to "unblock" the Gulf International Bank for the purposes of the Kuwaiti regulations would not unblock an entity for the purpose of the Iraqi regulations.

From a policy point of view, it is also clear that the Kuwait Assets Control Regulations have very different objectives than the Iraqi Sanctions Regulations. The purpose of the Kuwaiti Assets Control Regulations was to ensure that while Iraq was illegally controlling Kuwaiti territory, it did not confiscate assets from Kuwaiti banks and similar institutions in the United States. The purpose of the Iraqi Sanctions Regulations was very different. As the President stated on August 3, 1990:

"The measures we are taking to block Iraqi assets will have the effect of expressing our outrage at Iraq's actions, and will prevent that government from drawing on monies and properties within U.S. control to support its campaign of military aggression against a neighboring state."

Thus, since the purpose of the Kuwaiti regulations was different from the Iraqi sanctions, "unblocking" for the purpose of the Kuwaiti regulations would not automatically "unblock" an entity under the Iraqi regulations.

At the meeting you further stated that the Office of Foreign Assets Control had determined that the Gulf International Bank was not a blocked Iraqi entity because Iraq did not have "a managing or controlling interest." The Iraq regulations, however, contain a third criteria for defining an "entity" as an "Iraqi Government entity." That criteria is whether the entity is "funded" by the Government of Iraq.

The Government of Iraq was one of the seven governments funding an equal share of the Gulf International Bank's capital when it was established. To ward off insolvency in 1989, the Government of Iraq funded a share of the $400 million in new capital for the Gulf International Bank. This increased the Government of Iraq's ownership to over 15%. In April 1991, the Government of Iraq's share was reduced to 10.45% when it did not contribute to the new capital increase for the Gulf International Bank. It retained that level of ownership until its interests were extinguished in April 1992. During this period the Gulf International Bank had received payments which ultimately reached a total of approximately $416 million from the United States Government. Because the Government of Iraq provided money to establish the Gulf International Bank, and to keep it solvent in face of acute liquidity problems, the regulatory requirement of "funded" appears to have been met. Therefore, the Gulf International Bank should be considered, "an entity of the Government of Iraq."

The significance of this level of ownership is clear from the fact that section 510 of the Iraqi Sanctions Regulations requires that applicants for a license must disclose Iraqi ownership interests greater than five (5%) to the Office of Foreign Assets Control. It is my understanding that this disclosure did not occur in this instance.

In addition to prohibiting the transfer of funds to an "Iraqi entity", Section 201 of the regulations also prohibit transactions involving property in which the Government of Iraq has an interest. The regulations define "interest" very broadly as "any interests of any nature whatsoever, direct or indirect."

In litigation, the Office of Foreign Assets Control has taken a very broad view of an "Iraqi interest." For instance, in the Centrifugal Casting Machine case, the Office of Foreign Assets Control argued in its appellant brief that the Government of Iraq had a property "interest" in the $2.7 million down payment made to a U.S. company under a contract for the delivery of machinery valued at $27 million. The Office of Foreign Assets Control argued in this case that these assets should be blocked "to preserve those interests for use by the United States as a foreign relations tool, as well as for rational and fair distribution to American claimants." The Office of Foreign Assets Control argued strongly that the Iraqi Sanctions Regulations apply to the property interest the Government of Iraq has in the $2.7 million down payment.

If a ten percent ($2.7 million) down payment is sufficient to create an Iraqi interest in a piece of U.S. equipment worth $27 million, then the Government of Iraq's interest of 10.45% ($44 million) is a fortiori sufficient to create an interest in the assets transferred to the Gulf International Bank. The foreign policy rationale for freezing $44 mil-

lion is much stronger than the foreign policy rationale for freezing $2.7 million in assets. In both cases, the Government of Iraq has an interest, whether direct or indirect.

I must also note that, in addition to my concerns about how the Office of Foreign Assets Control has applied the Iraqi Sanctions Regulations, our research has also raised questions about the payments to the Arab Banking Corporation under the Libyan Sanctions Regulations and the manner in which they have been applied. For example, the Office of Foreign Assets Control on August 5, 1990, determined that the Arab Banking Corporation, based on its ownership and control, should be licensed for transactions under Executive Order 12723. Transactions were authorized with the proviso that no funds would be transferred to Iraq or Kuwait.

The Arab Banking Corporation has received more than $146 million from the United States Government because of Iraq's default on agricultural credit guarantees. The Government of Libya owns 26.78% of the Arab Banking Corporation, according to its annual report for 1991. Under current U.S. banking law, a company has control over a bank when it "owns or has power to vote 25% or more of the stock of the bank." (12 U.S.C.A. 1841(a)(2)). Therefore, under the Libyan Sanctions Regulations, the Arab Banking Corporation would be considered an entity of the Government of Libya because the Government of Libya's ownership "constitutes a majority or controlling interest."

Moreover, under the Libyan Sanctions Regulations, the transfer of interests in property of the Government of Libya in the U.S. to the Government of Libya is prohibited. This includes payments and transfers of any kind whatsoever, except into a blocked entity. Thus, it would appear that the payments to the Arab Banking Corporation were questionable under the Libyan Sanctions Regulations.

During the discussions of the legality of the Commodity Credit Corporation payments, you also directly requested that the Committee provide you with any information that it may have which indicates that banks receiving CCC payments had violated the Iraqi sanctions. Although we cannot confirm the veracity of this information, we are supplying it to you at your direct request. The Committee has obtained information about this issue from several sources, both public and private.

First, the Committee's research shows that federal authorities were concerned about "sanctions busting" activity by the Gulf International Bank and the Arab Banking Corporation at the time the sanctions were imposed. According to August 19, 1990, edition of The Washington Post:

"The Gulf International Bank is partly owned by the governments of Iraq and Kuwait, and that puts its financial activities under a cloud during the crisis. The Arab Banking Corporation is 25 percent owned by Kuwait and 25 percent by Libya, and that renders it suspect. Both institutions are being watched closely by U.S. and British banking officials, who reportedly are concerned they could be used for sanctions-busting. * * *"

Second, Mr. Abdullah Saudi, the president and chief executive of the Arab Banking Corporation, publicly stated the bank's intention was "to be the first to establish a strong banking relationship with Iraq if the political and economic situation stabilized," according to The Reuters Library Report on April 4, 1991. The article further quotes Mr. Saudi as saying that "Iraq is potentially very rich and very important—we would be more than delighted, once we see stability restored, to be there."

Third, there is at least one case on the public record where it appears that after the imposition of sanctions the Gulf International Bank and the Arab Banking Corporation provided financing for an entity owned in part by the Government of Iraq. According to the November 20, 1991, edition of The Reuters Library Report, the Arab Banking Corporation and the Gulf International Bank were two of four banks that made a $30 million loan to the Arab Shipbuilding and Repair Yard to expand its operations in Bahrain. The Arab Shipbuilding and Repair Yard is owned by the governments of Iraq, Libya, Kuwait and four other Gulf States. It used the loan to purchase two floating docks from a firm in Florida at a cost of $29 million. These news accounts raise serious questions about whether the Gulf International Bank and the Arab Banking Corporation are complying with the U.N. sanctions against Iraq.

Private sources have provided the Committee with several more pieces of information about alleged activity by the Gulf International Bank that may violate the Iraqi Sanctions Regulations. The attached letter from a source in Europe identifies nine Jordan-based front companies currently working in behalf of Iraq. The source alleges that the Gulf International Bank has financed the sanctions breaking activities of these companies. The source has travelled to Jordan and personally interviewed officers of one of these companies, Computer and Communications Systems, who indicated that the company had installed and serviced a large number of VAX and mini-VAX computers in Iraqi weapons plants. Furthermore, a director of this company revealed that his company was engaged in "active negotiations" with U.S. companies to help them break into the Iraqi market once U.S. sanctions are lifted. The source also has received information that this company allegedly has helped Iraq to procure spares and to service computers that have been hidden from the U.N. Special Commission.

The European source also has obtained information about a direct business contact between the Iraqi government and the Gulf International Bank since the invasion of Kuwait. According to the source, Iraq's government-owned Rafidain Bank sent a telex to the Bahrain office of the Gulf International Bank just three days after the invasion of Kuwait. The telex reportedly instructed the Gulf International Bank to immediately convert all Iraqi deposits at the Gulf International Bank into Swiss francs and to remit the funds to the Central Bank of Jordan's account with the Zurich branch of the Union Bank of Switzerland.

If any of these reports from private sources are confirmed, it would raise serious questions about the effectiveness of the Administration's sanctions program. I hope you will move quickly to address these concerns.

Sincerely,

PATRICK LEAHY,
Chairman.

MEDNEWS,
MIDDLE EAST DEFENSE NEWS,
Maisons-Lafitte, France, September 15, 1992.

JAMES M. CUBIE,
Chief Counsel, Majority Staff, Senate Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR JIM: (1) In response to questions from you and your staff, I have received the following list from a confidential source of Jordan-based front companies currently working on behalf of Iraq. These companies were specially identified as having allegedly received funds from the Gulf International Bank since April 1991 to fund sanctions-breaking activities: Mazhar Enlab & Partners Co,; Middle East Trading & Real Estate Co. Ltd.; Na'im al Nasser & Partners Trading Co.; Arab Eagle Trading Co. Ltd.; Doa'a Trading Establishment; Technical Equipment Establishment; Computer and Communications Systems [CCS]; Menas Mezikian Trading Establishment; W.R. Abdul-Hadi & Co.

(2) Earlier this year, before receiving this list, I was in Amman on a reporting trip tracking Iraqi front companies. Top on the list of suspects at that time was Computer and Communications Systems (CCS), a franchise outlet for Digital Equipment Corp. (DEC).

Interviews in Amman with a CCS director, Hashem Samara, and the company manager who ran their Baghdad office in the late 1980s, established that CCS had installed and serviced a large number of VAX and mini-VAX computers in Iraqi weapons plants.

Samara volunteered that CCS was engaged in "active negotiations" with Texas Instruments and with other U.S. companies to help them break into the Iraqi market once UN sanctions were lifted.

Samara co-owns CCS with a brother, Isam Fayez Samara, who is the majority shareholder of International Computer Systems, Ltd. (ICS), a British computer company which had signed contracts to deliver tens of million of dollars worth of VAX systems to Iraq before August 2, 1990.

Through ICS in Britain, and CCS in Jordan, Digital Equipment Corp. was Iraq's single largest supplier of workstations, minis, and mainframes with clear defense and defense manufacturing applications. My sources believed that both companies were still helping Iraq to procure spares and to service computers that have been hidden from the UN Special Commission.

(3) Two other companies on the list are familiar to me for sanctions-breaking activity, although I do not have first-hand knowledge to back this up.

(4) I have learned from confidential banking sources that the Rafidain bank in Baghdad sent a telex to the Bahrain office of the GIB on August 5, 1990, instructing them to immediately convert all Iraqi deposits as GIB into Swiss francs and to remit the funds to the Central Bank of Jordan's account with the Zurich branch of the Union Bank of Switzerland (UBS). A similar telex was sent the same day to the Bahrain subsidiary of UBAF, known as ALUBAF, which then held $75 million in short term Iraqi cash deposits. One of the ALUBAF's directors, Dr. Michel Marto, was also serving as Deputy Governor of the Central Bank of Jordan.

I hope this information will be of use to your investigation, and would be happy to answer any follow-up questions.

Sincerely yours,

KENNETH R. TIMMERMAN.

Mr. LEAHY. Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TAX ENTERPRISE ZONES ACT

The Senate continued with the consideration of the bill.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the pending amendment be laid aside and that it not be brought before the Senate again without the agreement of the two managers of the legislation.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Mr. President, let us clarify one thing, because we are trying to help Senator SMITH out. At the moment, his amendment keeps coming back up. We are trying to lay it aside and go on to other business. I would not want him to think he can never bring it up, ever, without our consent. At some stage, if he wants to come back, and there is nothing doing, he can call it up.

Mr. BENTSEN. That is right.

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

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that a member of my staff, Dr. Jim Merchant, be allowed the privilege of the floor during the debate on this bill.

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

Mr. HARKIN. Mr. President, I understand the floor situation right now is that there are no amendments pending?

The PRESIDING OFFICER. The committee substitute is the pending question.

Mr. HARKIN. I understand, but it is open for amendment right now, is it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Mr. President, I am under the understanding that at 1:30, under a previous agreement, Senator BUMPERS is going to be recognized to offer his amendment, with a 1-hour time agreement; and I have an amendment, Mr. President, that I have been attempting to bring up on this bill, which deals with taxation.

It is. I have been off of it trying to reach some kind of time agreement. There seems to be a problem with that. In the meantime, I am going to just talk briefly about my amendment probably until 1:30 until the time when Senator BUMPERS—I guess under a previous arrangement—will be bringing up his amendment. I hope to be back shortly after his amendment is disposed of.

Mr. President, the amendment that I will be offering today I am sure most Senators are aware of, because they have gotten a lot of mail. The amendment I will be offering today, I hope sometime this afternoon, would basically reduce the tax deductibility for advertising for tobacco, a 100-percent deductibility to 80-percent deductibility. You may ask why 80 percent? It is 80 percent to bring it in line with what we did in the tax bill of 1986 when we reduced the tax deductibility of business expenses for meals and entertainment. For example, the deductibility for business meals, lunches, dinners, breakfasts, was never to 80 percent. Prior to 1986 if you were in business and you took a potential client or a client to lunch or to breakfast or to dinner, 100 percent of the cost of that meal was deductible as an ordinary and necessary business expense.

In 1986 the Congress restricted that and said that, yes, you can take a client to lunch or to dinner or breakfast but you can only deduct 80 percent of the meal, not 100 percent. So that has been in the law now for about 6 years.

It always seems incongruous to me that we have restricted that and yet we still allow 100-percent deductibility for advertising for tobacco. That is kind of odd.

So I thought what we might want to do is to restrict that, put it at the same level, if we are going to say for business meals and entertainment you can only deduct 80 percent of expenses, that perhaps tobacco ought to be able to deduct only 80 percent of its advertising.

Mr. President, I have been trying to bring this up since August. I know there is a great deal of resistance to this amendment—I am going to be talking about that—a great deal of resistance to this amendment. But I believe it is something legitimately we ought to discuss and vote on here.

I dare say that the vast majority of the American people do not know that their tax dollars are being used to subsidize advertising for tobacco. That is exactly what it is. It is quite a bit of money, I might add, approximately $1 billion a year.

So I think it is something that we ought to debate and I am hopeful we can get an up-or-down vote on this at some point this afternoon. I am willing to enter into a time agreement. I understand there are others on the other side of the aisle, however, who are not interested in a time agreement.

I want the record to show that this Senator is not holding up the tax bill. I am not trying to hold it up. I am not trying to stall it, or anything like that. How I vote on it I have not decided yet. It depends on what happens to the amendments. I do not want to stall it.

I want to offer what I consider to be a legitimate amendment dealing with tax policy of this country on how we want to give tax preferences and tax breaks like that. I am hopeful sometime this afternoon I will be able to lay the amendment down and have a reasonable debate on it.

Mr. FORD. Mr. President, will the Senator yield?

Mr. HARKIN. I am delighted to yield to my colleague from Kentucky.

Mr. FORD. We are trying to work out a time agreement and this Senator is working diligently to give the Senator a time agreement. But the Senator says he is not trying to hold up the bill. By the very nature of offering this amendment the Senator is holding up the bill.

The Senator talks about deduction of the meals. That is across the whole industry. Now he is singling out one industry just to reduce them and to me that is unconstitutional. So, if he wants to reduce the whole industry by 20 percent that is fine. Why does he not go ahead and do that? He just singled out one industry that is a legitimate and legal industry.

What the Senator is trying to do here now is single them out for a punitive tax law?

So I would say to my good friend we are ready—I am—to debate this issue. I understand we probably want to give the Senator less time than he wants, but we will see how that works out.

I promise the Senator we will have an opportunity to agree on a time agreement some time shortly. So I do not want the Senator to say that he is not holding up the bill. The very fact of offering the amendment causes the bill to be delayed.

Mr. HARKIN. Mr. President, that is just about the oddest kind of argument this Senator ever heard on this floor that somehow we cannot offer amendments to bills or it will hold up the bill. That is ridiculous.

Of course, why we bring bills on the floor is to express the will of the Members, and we offer amendments. Of course, bills have to come to the floor.

We had the spectacle here where we have been here an hour and 15 minutes, because we have a pending amendment and the author of the amendment would not come to the floor and time is not running against that amendment.

I would have been willing to start my amendment and lay my amendment down an hour ago. I will lay the amendment down now. I do not want to go against the will of the ranking member of the committee.

For the Senator to say we hold up the bill by offering an amendment, we offer amendments to try to improve a bill and change it, not to hold it up. I think that is a specious argument to say we are trying to hold it up. Talking about holding up bills, that is when Senators take undue amounts of time with a filibuster and the like, which is not what I am trying to do.

I would be willing to discuss the constitutionality of this amendment. I hope we will have a chance to talk

about the constitutionality of this amendment, because I believe it is eminently constitutional, and there are constitutional lawyers on our side of the argument that say it is constitutional.

It is constitutional because there is a line of cases establishing a lower level of constitutional protection for commercial speech than for other types of speech. Commercial speech is speech that merely proposes a commercial transaction.

Because commercial speech is given a lower level of protection than other speeches, cases cited by authorities that made mailings to other offices and staff simply do not apply to this amendment.

The underlying point is, I tell my friend from Kentucky, that if the Congress has the power to make the product involved illegal, it has the lesser included power to prohibit the advertising of that product. Reducing the level of deductibility is even a smaller exercise of power which is just as constitutional.

So, again, if we have the power to completely ban it under the Constitution, we have the lesser included power to ban all advertising of that product.

Arguments which elevate advertising to the same level of constitutional protection as other speech are simply wrong and ignore the entire line of cases establishing the lower level of protection for commercial speech.

Mr. President, I will be including those at some point later.

Again, that is a red herring. Clearly this is constitutional. The real issue is 434,000 deaths this year due to smoking and tobacco use. That is the issue. And the issue is also: Are we going to allow these tobacco companies to continue to go after the kids of this country to hook them on tobacco subsidized by taxpayers.

Mr. President, what my amendment is, pure and simple, is a drug abuse amendment to reduce drug abuse in America. The No. 1 drug abuse in America is nicotine. It may be legal, but that does not mean our taxpayers have to condone it by using their tax dollars to subsidize the advertising.

Mr. President, it is time that we take this step to reduce the tax deductibility for advertising. It is simple. Put the same limit on it as we do on meals. But also what our amendment does I want to spell it out. We do not just reduce the tax deductibility. We say that the revenues generated from that will go back to the States to support advertising designed to reduce the use of tobacco products by our children, pregnant women, and minorities, all targets of the tobacco industry advertising campaign.

So this amendment has two aspects. One, reduce the deductibility of advertising for tobacco from 100 to 80 percent, and two, take the revenues generated from that and get it back down to the States where the State departments of health can use that money to buy advertising to reduce the use of tobacco among kids, pregnant women, and minorities.

So, the advertising people in America, those that advertise, should not be worried about this amendment at all, because they are still going to get advertising. The money is going to stay in the advertising pot, but it is just going to be put into advertising to reduce the use of tobacco.

Mr. President, I have some charts that I am going to show now and I am going to be showing them later, too. I think they are some pretty interesting ones that will kind of highlight this.

Mr. President, let me introduce you to a guy by the name of Old Joe Camel. I think it is time we take a look at Old Joe Camel. Here is Old Joe Camel. You may have seen him before. He is a smooth character, you see. Since 1986 he has been the mascot of Camel cigarettes advertising campaign.

As I stated, he is a smooth character. If you do not happen to recognize Old Joe, Mr. President, then I suggest you ask any 6-year-old who he is. He will recognize him. According to a recent study published in the Journal of the American Medical Association [AMA], more 6-year-olds can identify Old Joe Camel than adults. In fact, just as many 6-year-olds can identify Old Joe Camel as they can Mickey Mouse. Ninety-one percent of 6-year-old kids in America can identify Old Joe Camel.

What does that have to do with anything? Well, consider this—and I ask the Senator from Oregon, the distinguished ranking member of the committee, to consider this—in the 3 years following Old Joe's introduction to the American public, the illegal sale—the illegal sale—of Camel cigarettes to children under 18 years of age is estimated to have risen from $6 to $476 million a year. Again, from the Journal of the American Medical Association, December 11, 1991.

Forty-four States prohibit the sale of cigarettes to kids under 18. Yet, when they started with Old Joe Camel, in 3 years, it is estimated that the sale of Camel cigarettes to children under the age of 18 rose from $6 to $476 million a year. That is the illegal sale of Camel cigarettes. In fact, the proportion of smokers under 18 years of age who chose Camels has risen from 0.5 to 32.8 percent in 3 years.

So Old Joe Camel has made his mark. And, of course, you know, the thing that appeals to kids is when you look at Old Joe Camel, he is a smooth character and obviously he is a winner.

Here is the race track. He has the checkered flag. He is out in front. Of course, you know, he has a very smiling, very beautiful young woman next to him, and she is holding the trophy. And he has all the fans in the stands cheering.

So Old Joe, he is smooth. He is a winner. And, of course, he has beautiful women around him all the time. So it is no wonder that kids under age 18 who chose Camels went from 1 half of a percent to 32.8 percent in 3 years.

Again, here is the kicker, Mr. President. Old Joe Camel made this possible because it is subsidized by the American taxpayers. Because R.J. Reynolds can deduct the cost of their entire advertising campaigns, the taxpayers get stuck with the bill. Then we get stuck again with the bill for the subsequent health care costs.

I thought we were trying to help people stop smoking in America. This year, we are going to spend $114 million through the Public Health Service to help people stop smoking and reduce health care costs. Think of that. We will spend $114 million this year—your money, taxpayers' money—to reduce smoking.

At the same time, the tobacco industry is spending 30 times that amount, $4 billion in 1990, to encourage people to start smoking. And we are giving them a tax break? What kind of sheer, utter nonsense is this? They are spending $4 billion a year to advertise tobacco and we are spending $114 million a year to try to cut down smoking, and we give the tobacco companies a tax break to advertise. That has got to be sheer and utter nonsense.

So this amendment is a very small step. It just asks that we reduce the tax deduction from 100 to 80 percent. And it transfers that money to be used to fund a comprehensive and responsible advertising campaign in every State to help reduce smoking.

The case could not be clearer for this amendment. Although the tobacco industry still denies it, over 50,000 scientific studies have clearly demonstrated that smoking causes a host of illnesses and kills people.

Now to put this in perspective, I brought along another chart, which shows that every year, every single year, more Americans die from tobacco-related diseases than died in all of World War II.

Over here on the left is the annual smoking deaths, 434,000 every year. Here is all of the World War II, just slightly over 400,000. Down here, you can barely see it, is the annual heroin, morphine, and cocaine deaths. It is barely on the chart.

And yet we are spending billions of dollars in this country going after these, and we are subsidizing the sale of nicotine, a drug, in America. It may be legal, Mr. President, but in 44 States, it is illegal for kids under 18. And yet they get to advertise to kids all over America, and we subsidize them. More deaths per year from smoking than from all of World War II.

In the 1990's, in this decade alone, cigarettes will kill 4.5 million Americans. That is the equivalent of killing

every man, woman, and child in the cities of Boston; Buffalo; Greensboro; Miami; Flint, MI; Cleveland, OH; Fargo, ND; Dallas, TX; Baton Rouge, LA; Austin, TX; Denver, CO; Salt Lake City, UT; Berkeley, CA; and Portland, OR, again all put together. In this decade alone, that many people will die from smoking-related causes.

What is more, smoking cost America $65 billion a year in lost productivity costs and health care costs. No wonder Health and Human Services Secretary Dr. Louis Sullivan says that cigarettes are the only product that—and I quote him—"when used as intended, kills." Secretary Sullivan, the only product that "when used as intended, kills."

Mr. President, do you think taxpayers want to be accessories to this? I ask anyone listening to my words, ask yourself, look into your own heart and your own conscience, do you want your tax dollars used to subsidize advertising for tobacco? Just answer it yourselves. I think the overwhelming response is going to be, no.

Mr. President, I said $4 billion a year they pay for advertising. Let me tell you, it is working. You have to hand it to the tobacco companies. They know what they are doing.

Only one other product is more heavily advertised in America, and you know what that is. The automobile. The automobile is the No. 1 advertised product in America. The second most advertised product in America is cigarettes.

Cigarette advertising themes remain remarkably consistent.

Mr. President, I will show these again later on, but I think it is time to take a tour through history.

Let us go back a few years and then bring it up to the present day and let us see how much has changed.

Here is an ad, back when I was a kid, for Lucky Strike. It says, "The shock of facing what your figure may become."

Of course, here is a shadow of a very fat person, and, of course, the picture of a young woman smiling, very slender, well proportioned.

"Avoid that future shadow by refraining from overindulgence, if you would maintain the modern figure of fashion."

So, "When tempted, reach for a Lucky instead."

So, if you want to maintain a nice, trim figure all you have to do is smoke Lucky Strikes. That is all you have to do. Of course this is 1930. I am sorry, that is before I was a kid. That is before I made my appearance on the scene. But there they were saying, if you want to stay slim, smoke a Lucky. That is one.

Here is another one. This is more like what I remember when I was a kid. This came out, I think, in 1953. This is a 1953 ad from the Saturday Evening Post. It is a doctor, of course. He has his uniform. I do not know if he is a doctor but he is portrayed as a doctor, white uniform, he has an eyepiece up on his head. It says:

Do not remove the moisture proof packing from your package of Camels after you open it. The humdior pack is protection from dust and germs. In office and homes, even in the dry atmosphere of artificial heat, the humidor pack delivers fresh Camels and keeps them right until the last one has been smoked.

Here you have is someone portrayed as a Camel smoker saying all you have to do is keep the package closed and it will stay fresh, it is OK. You have a doctor telling you.

Just so we do not leave the women out here is a nurse smoking a cigarette. Again, it is healthful, it is OK. The nurses are doing it. "Smoke a fresh cigarette, smoke Camels."

Here is one, also, that came out about 1951. "Science discovered it, you can prove it. No unpleasant after taste." Here is someone looking through a microscope. He is holding a cigarette. What it said is, "Here is the biggest plus in cigarette history, Chesterfield is the only cigarette of all brands tested in which members of our taste panel found no unpleasant aftertaste." Of course it is scientific.

Mr. President, this ad came out right after the first study was released, it was the Oschner study, Dr. Alton Oschner in New Orleans, that first linked cigarette smoking to lung cancer. Right after that came out these ads came out, somebody looking through a microscope saying, "Science proved it, you can prove it," scientifically it is OK.

But here is the worst one of all, I thought. We all remember Johnny, the young small guy who used to always advertise, "Call for Philip Morris."

"An ounce of prevention is worth a pound of cure. Philip Morris are scientifically proved far less irritating to the nose and throat."

It says here, "When smokers change to Philip Morris, substantially every case of irritation of the nose and throat due to smoking either cleared up completely or definitely improved." This is from the findings of "a group of distinguished doctors."

So, again, preventive health care—smoke cigarettes. An ounce of prevention is worth a pound of cure. That is what people were led to believe for many, many years with tobacco advertising. That somehow you could stay young, you look healthy, you can be slim, scientific evidence, proof, an ounce of prevention is worth a pound of cure, it is less irritating.

Of course what they were getting at is if you had emphysema or cancer of the throat it would be less irritating to smoke Philip Morris cigarettes. Of course the new version of these ads are light cigarettes: less tar, less nicotine. There is no proof they are less harmful at all.

Again, they said it would keep you from gaining weight, make you look good and all that kind of stuff. Each one of these ads I just showed misrepresents cigarettes as a healthful product that makes the smoker seem glamorous and successful.

You might say those are the old days. The tobacco industry came up with some principles governing cigarette advertising and sampling. Let me read what the tobacco industry's own principles are.

"Cigarette advertising shall not suggest that smoking is essential to social prominence, distinction, success, or sexual attraction."

That is the cigarette advertising and sampling principles for the tobacco industry, "Cigarette advertising shall not suggest that smoking is essential to social prominence, distinction, success, or sexual attraction."

But one look at modern-day ads will tell you nothing has changed. it is exactly the message the tobacco industry is sending out today. Here we are. Here is old Joe Camel back again. He is a smooth character. he has smooth moves.

"Foolproof dating advice, smooth rule 25"—and there are all these things. The fourth thing is, "Always break the ice by offering her a Camel."

Of course you have this guy with a Camel cigarette and all these admiring young people around him.

Prominence? Wait a minute. Let me read it again. The tobacco industry's principle says, "Cigarette advertising shall not suggest that smoking is essential to social prominence of sexual attraction."

Foolproof dating advice? Smoke a Camel, offer her a Camel.

How about this one? How to impress someone at the beach? Smooth move 4. Here is this very masculine young man and he has a woman slung over his shoulder caveman style. There are a couple of admiring women behind him looking at him in sort of awe and wonder.

No. 4, "Always have plenty of Camels ready when the beach party begins."

Again, the tobacco industry's own principles they say they live by, "cigarette advertising shall not suggest sexual attraction."

What do you call that? That is exactly what it is.

Here, "When only a smooth move will do." Here is a young woman, obviously very healthy, very attractive; a very sexually suggestive pose on the beach and the young man approached her. Advertising for Camels.

It says that it shall not suggest that smoking shall be used for sexual attraction or social prominence.

There is another thing that bothers me about this advertising campaign. In 44 States the sale of cigarettes to someone under 18 is prohibited by law. In almost every one of these ads there

is a coupon that you can clip out and send in for a free pack of Camels. Clip it out, send it in, free pack of Camels, any style.

Of course it says in fine print on the back, "Limit 1 coupon per customer and to smokers 21 years of age or older."

Mr. President, I ask you, how are they going to know if you are 21 years of age or older? Clip it out, send it in and they send you a pack of Camels. They will probably send you more than that; probably send you a whole box.

But that is the advertising campaign that is going on right now in clear, clear violation of their own principles of the tobacco industry. "Cigarette advertising shall not suggest that smoking is essentially to social prominence, success, or social attraction."

So much for that.

There is another one here I wanted to show. Here is another set of adds, different cigarettes, same kind of thing. These ads are being targeted to kids, young people. Here is the ad that bothers me, probably the most. You have to kind of look at it closely. I do not know if you can see it with the camera focus, but it is Newport Lights in People magazine. Definitely a picture of a pregnant women.

Do not let someone tell me she is not pregnant. All you have to do is look at here. She is pregnant. And what is the line beneath it? "Alive with pleasure." Do you understand the play on the words, with the pregnant women and she is obviously getting a present from this guy. Telling you, sort of subliminally, she is pregnant, she is smoking, she is alive with pleasure and she smokes Newport Lights.

When we know tobacco is one of the chief causes of low birth weight babies. And any doctor will tell you no women—no one ought to smoke, especially pregnant women, because it passes on to the child. yet a definite advertisement going to pregnant women.

More than 900,000 babies will be born this year to mothers who are smoking and the results are dramatic. Cigarette smoking during pregnancy accounts for 20 to 30 percent of low birth weight babies; 14 percent of preterm deliveries; 10 percent of all infant deaths.

The EPA now estimates that children's exposure to environmental tobacco smoke, much of it from mothers and fathers who smoke, results in up to 300,000 lower respiratory infections per year in kids, up to 15,000 hospitalizations per year, up to 1 million attacks of asthma, and 26,000 new cases of asthma every year in our kids.

But remember the old ads I showed you, about how, you know, if you reach for a Lucky you would stay slim? Now we have Virginia Slims, put it right in the name, Virginia Slims. "You have come a long way, baby." Yes, women, now you can get lung cancer, too, just like the men are getting and you can get emphysema and all the other illnesses, but here is a very slim, very trim—Virginia Slims. Wait a minute? What did that principle say?

"Cigarette advertising shall not suggest that smoking is essential to social prominence or distinction * * *." "How to be a sport without looking like a jock," Virginia Slims. And then, of course, "Light my Lucky," another very suggestive phrase used to advertise Lucky Strikes, like the old ones about "lighting my light."

Let me talk about social distinction and success. "Cigarette advertising shall not be used to suggest that smoking is essential to success or to social prominence * * *."

Now we have cigarette advertising directed toward African-Americans, all black: "You've got what it takes, the Salem spirit." Of course, they are happy, out having a great time. Here is Benson & Hedges. Social distinction, success, obviously two very successful African-Americans. He looks very successful. He has a tailor-made suit on and a diamond ring on. She obviously looks very successful. What are they doing? They are smoking cigarettes.

So, please, tobacco industry, tell me again about these wonderful principles you live by. It says, "Cigarette advertising shall not suggest smoking is essential to success, sexual attraction * * *."

Here is another one. This is Benson & Hedges. Here is a man. He has pajama bottoms on. She has pajama tops on, obviously nothing else. The words are: "He likes the bottoms" and "She likes the tops." She has his arm around him, again, very sexually suggestive. Benson & Hedges cigarettes.

So one more time, tobacco industry, tell me how well you are living up to your own principles. Tobacco advertising should not be used for sexual attraction, for social prominence, for success.

Here is another one, tobacco advertising trying to give you the message that if you smoke, you are strong, macho. This is the macho side about it. We all know about the Marlboro man. I am sorry I do not have the Marlboro man here. We all know about the Marlboro man. He is tough. I heard in my car driving to work a month or so ago that one of the Marlboro men just died of lung cancer. I think he was 51 years old. The guy on the horse; he is tough, he is tanned, and he has the cigarette in his mouth. You have seen the Marlboro cowboy. Age 51, died of lung cancer.

Here is Winston, "America's best." Here are a couple of mountain climbers, obviously very macho; you have to be tough to be a mountain climber. He is hanging over a cliff. The suggestion: Macho, tough, Winston is the cigarette for you.

Or if you want to kayak down a river with a hard hat here, looks very dangerous, "Performance counts. The thrill of real cigarette taste." What cigarette is this? Vantage, I guess.

Here is a surfboarder. He is taking all kinds of chances in the waves. "Reach for the exception." So, again, if you want to be successful, sports, macho, manly to young kids, smoke cigarettes; it does not hurt you. In fact, if you smoke, you probably can be a mountain climber, too.

That is the kind of advertising that we are trying to get at.

Again, Mr. President, remember, every ad I showed is paid for at taxpayers' expense. Again, there are those, Mr. President, who make the argument that I am trying to stifle free speech. Not true. If they want to advertise, they can advertise, just do not ask me to pay for it. Do not ask my wife to pay for it. Do not ask millions of Americans who work hard and pay their taxes and are trying to tell their kids not to smoke, trying to set a good example. Or millions of Americans who are fighting hard to cut down smoking in airlines, smoking in public places, trying to keep cigarettes and stuff out of schools. Let us give them a break. Let us say you do not have to have any more of your tax money go for all those ads.

Mr. President, the tobacco industry is increasingly targeting youth magazines, such as Rolling Stone and National Lampoon. Twenty percent of all high school students say they have been offered free samples of cigarettes—20 percent. And 50 percent of their friends have been offered free samples, friends who are not in high school have been offered free samples.

Mr. President, let me ask you, what is this the technique of? Someone offers you a free sample. It is free, go ahead and try it. We will get you hooked. That is the technique of the drug pusher in America. Kids who start on drugs do not go out and buy drugs, they are given a free sample, a little free marijuana, a little free cocaine. "Try it, you'll like it." Once they have you hooked, then you start paying for it.

That is what the tobacco industry is doing: Free samples galore all over America. Go into your shopping malls. Any Saturday in our larger cities, where is the largest concentration of young people? Go out to your shopping malls. I know, I have a teenage daughter. Go out to the shopping malls. They are all over. You cannot even walk, young kids all over the shopping mall. Actually, it is kind of a nice place for them to congregate, quite frankly. What do you see out there? You will see tobacco companies offering free samples. I cannot say this authoritatively, Mr. President, but I do not think they ask kids to show them their I.D. to show how old they are. I bet that never happens.

So get them hooked, give them a free sample. It is working. Let me show you

how it is working with young kids. Tell me it is not working.

Ninety percent of all smokers began their smoking habit by the age of 20. Ninety percent by the age of 20. Twenty-five percent by the age of 12. That is sixth grade. Another 25 percent by eighth grade. Forty percent, age 15 to 20. Ninety percent of smokers in America start their habit before the age of 20.

I tell you, Mr. President, the tobacco industry's advertising is wonderful advertising because it works. It gets young people hooked; it gets them interested in smoking. Do you want to be macho, if you are a male? Do you want to have sexual attraction? Do you want to be successful? Smoke cigarettes, smoke this brand, that brand, or whatever brand they are advertising.

It is estimated that children and adolescents consume over 1 billion packs of cigarettes a year. Think of that. Children and adolescents consume 1 billion packs of cigarettes a year. This very day, 3,000 children will start smoking today—3,000. Our children, our kids pay $1.25 billion to the tobacco industry every year for their right to smoke; $1.25 billion for adolescents to buy these cigarettes.

Here is another interesting statistic. While 95 percent of high school smokers think they will quit—that is right, go to high schools, polls have been done, they ask the high school student, will you quit smoking? Oh, yes, I am going to quit. Eight years later, only 25 percent of them have been able to. And taxpayers are paying for this.

Again, that is why I say, Mr. President, there is no more addictive drug in America than nicotine; the most addictive drug in America is nicotine. Free samples, get them hooked; advertising to appeal to our young people to smoke, that smoking is healthy, keeps you slim, makes you sexually attractive to the opposite sex; that you are a winner and a smooth character. Do not forget old Joe Camel, he is a smooth character. So kids start smoking.

But we know how to stop it. We do know how to stop it: counteradvertising. Somebody said the best defense is a good offense.

Counteradvertising works, Mr. President. Between 1967 and 1970, an amazing thing happened. The fairness doctrine was applied by the FCC to require 1 free minute of counteradvertising for every 3 minutes of paid cigarette advertising by the broadcast media.

Again, Mr. President, the fairness doctrine was applied by the FCC that required 1 free minutes of counteradvertising for every 3 minutes of paid cigarette advertising on radio and television.

During that period of time, 3 years, cigarette consumption dropped by 9.5 percent, the greatest reduction nationally in smoking before or since.

So it worked. Let me show you. Here is an advertisement I think just might work. On the left they say, "I started smoking to look older. It worked."

Of course, here is the young woman on this side, looks very good, has the cigarette in her hand, and over here it shows the effects of smoking and aging and what it does to you.

This kind of advertising works. This is the kind of advertising that would be paid for by my amendment because we would not allow certain deductions for advertising and the money would go back to the State departments of public health to be used for this kind of advertising.

Here is another interesting—a good ad here put out by "Doctors Ought to Care."

"They'll really know you're smoking." He has a cigarette and his teeth are just about as yellow as a canary.

This kind of advertising has an effect, too. This is the kind of counteradvertising that we need to let young people know what is going to happen to them if, indeed, they do take up smoking.

If you want nice, yellow teeth, just smoke a cigarette.

If you are a young woman and you want to age prematurely, just start smoking cigarettes. This is all you have to do.

So this is what happened during those 3 years we had counteradvertising, and I will tell you, the FCC decision had all the foxes running for their holes. Lo and behold, the tobacco lobby and the tobacco industry decided to support a ban on all television and radio advertising on both sides of the fence because the counteradvertising was so effective in getting people to stop smoking.

The tobacco industry said OK, we will make you a deal. We will take all of our advertising off of radio and television if you take the counteradvertising off. But then they reset their sights and invented new ways to attract young smokers. And with the taxpayer subsidy, they made up for lost ground.

But we know that counteradvertising still works. California has the Nation's most aggressive advertising campaign, and in the past 2 years they have decreased statewide smoking rates by 14.6 percent and saved $744 million in the process.

So that is the direction in which we have to move. This amendment I am offering will allow every State to follow California's example by simply reducing the tobacco advertising deduction from 100 to 80 percent. Use of the savings for a counteradvertising campaign will save lives, increase productivity, reduce health care costs, all without spending a nickel more of taxpayers' money, and it will not take a dime away from the advertising industry because it puts advertising dollars right back in the form of responsible, comprehensive advertising to stop smoking.

Now, a case can be made that we should totally ban cigarette advertising. This has been advocated by many. This amendment does not do that. We are not proposing that.

A case could also be made for a total elimination of tax deductibility for tobacco advertising and promotion. We are not proposing to do that either. We are simply asking that we place the same limits on tax deductibility for cigarette advertising that we imposed on business meals in 1986 from 100 to 80 percent; use that savings to help people stop smoking.

Again, I find it ironic, incongruous, that we reduce the deductibility for meals, for eating a healthy meal, we reduce that, but we keep the deductibility up to 100 percent for advertising cigarettes. Now, go out and explain that to the average American. Good luck.

At a time when we are trying to hold down health care costs and reduce wasteful Government spending, here is a clear-cut example that will help us do all of these, hold down health care costs, increase productivity, reduce wasteful Government spending.

Some people say that we would never propose to do this to a normal product, that we are singling it out.

Mr. President, this is not a normal product. This is the only product that when used as intended kills people. And if we in Government are going to allow an arsonist to run loose, we better be equally dedicated to putting out the fire.

I know Senator BUMPERS is here to offer his amendment and he has a time agreement. I have not yet touched the issue of constitutionality. I hope that later today I will be able to do that because this amendment is eminently constitutional.

Mr. President, since I first said that I would be offering this amendment back in, I guess, July, all Senators have received a very slick mailing. It must have cost the opponents of our amendment a lot of money to send this out. It is very slick. It says, "Free speech. The Harkin amendment to H.R. 11 would put our most precious amendment on the block."

And then there is a letter in there to all of the Senators. It says, "Think first about the Harkin amendment." They say it is unconstitutional, it is bad tax policy, would set a dangerous precedent.

Because so much money was put into this, Mr. President, and sent out to every Senator's office, I feel compelled to answer this in a straightforward manner, that this amendment is constitutional, and it is tax policy that has basically been used before many times in our country.

So I will yield the floor now because I know agreement has been set. I want to respect that. I know Senator BUMPERS is ready to offer his amendment. I

hope at some time this afternoon I will be able to offer this amendment. I am willing for a time agreement, but I do want enough time to answer the specious and, I want to say, outright false, false claims made in this very slick mailing that was mailed to every Senator's office about the Harkin amendment. It is full of falsehoods, and I want to respond to those on the Senate floor. And I will do so later on this afternoon.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I indicated when the Senate began consideration, or I should say when the Senate resumed consideration of this bill yesterday morning, it was my hope and intention the Senate would complete action on this bill this week and that we would remain in session until we did so. I expressed then the hope we could do that by late Friday so as to obviate the need for a Saturday session.

Although the managers have been diligent in attempting to move forward, the reality is that by recorded vote, since the Senate has been on this bill, only four amendments have been disposed of, only one today, even though we have now been on the bill for nearly 4 hours.

At one point I was advised that Senators in the aggregate had expressed an intention to offer an estimated 95 amendments. Even allowing for some puffery in that number, it is obvious that at the rate at which we are proceeding, it will be very difficult to finish this bill by Saturday night, let alone Friday night.

So I take this opportunity to encourage Senators to cooperate with the managers so that we can move forward. It is not unusual for the Senate to have very few votes during the day, and then when we get into the evening we end up having a lot of votes. And Senators ask repeatedly at 10 or 11 o'clock, what are we doing this evening? The answer is the Senators are unwilling to do it during the day. Their schedules conflict or they have other commitments and are simply unwilling to come to the floor until it suits their precise convenience. That means that the entire Senate must wait.

I have discussed with the distinguished Republican leader my intentions with respect to the schedule next week. I wanted to inform the full Senate of our intentions in that regard early next week, and get a reaction from the Republican leader as to what will occur as we attempt to proceed to other matters.

As we all know, the President has entered into an agreement for the reduction of nuclear arms known by its acronym as the START agreement, and the President has requested that we act on that measure this year and has stressed its importance. I agree with the President. I share his view of the importance of the agreement, and at the time it was reached commended him for it, and do so again today.

I think it is important that we act on that agreement. I indicated to Senator DOLE that I would like to proceed to it on Monday, a day on which there will be no recorded votes because of our observation of a religious holiday. But perhaps we might be in position to complete action on it with votes on Tuesday.

My reason for inquiring of the distinguished Republican leader earlier today, and now here on the floor, is that if there is going to be a filibuster on that measure, it would be helpful to know it in advance so that we could file the necessary cloture motion and set up a cloture vote on Tuesday so that we can then proceed to it rather than waiting and learning of that late Monday which would delay the filing of the cloture motion and the cloture vote.

So I would like at this time to inquire of the Republican leader or ask if he has any comments on this proposed schedule which I always invite, of course, and inquire as to his knowledge of the intention of his Republican colleagues with respect to the START agreement.

(Mr. FOWLER assumed the chair.)

Mr. DOLE. I thank the majority leader. I would say first of all, I support what he said initially with reference to the bill now pending. I have no doubt that the managers here are ready to prepare and go to work.

I think, if there are 110 amendments, I hope Members who have those amendments would come to the floor and agree on a very short time agreement. And if it can be disposed of in a voice vote we ought to have a voice vote. Otherwise, the majority leader is correct; we are looking at late Saturday night if we could even finish it by late Saturday night.

So I urge my colleagues—and I know there are a lot of conferences going on, committee hearings going on, all of our colleagues are involved in two or three different things. It is very difficult for the managers, and this is a very important bill. It is a bill we should pass. It should be signed by the President.

We have to go to conference yet, too. I underscore what the majority leader had to say. I want to support the managers in any way that I can. We have discussed START. It is not on the calendar. It was discussed in the leader's office before we put this group together. It is something the White House has requested, something the White House wants.

We have, I think, about three Members on this side, maybe more, who have some serious reservations about parts of that agreement. We are trying to determine now what if any amendments or reservations they might add to this START treaty so we can tell the majority leader. It is my understanding, if necessary, that could be debated also on Saturday of this week; the START Treaty.

Mr. MITCHELL. That is correct. Mr. President, if the desire of our colleagues is to have more time to debate on that, as soon as we complete action on this bill, or if we by good fortune finish this bill Friday night, we would be prepared to be in session on Saturday to permit a full discussion and debate on the START Treaty in addition to the full day set for Monday.

So given the importance of the measure, of Senators who have the opportunity to express his or her view on it, the one thing I would like to do is to try to complete action on it by Tuesday so that we can proceed to other matters. As I have indicated to the distinguished Republican leader, we are hopeful that our colleagues will permit us to proceed.

Obviously, any Senator has a perfect right and an appropriate right to offer amendments if he or she so chooses. We have no desire to foreclose that; merely wish if there are to be such amendments that they be offered, that they be debated, and that we then vote on them and then proceed to vote on the treaty.

Mr. DOLE. If the majority leader will yield just briefly, again, I would urge my colleagues. We are trying to stick to this schedule. The schedule has us leaving here hopefully on October 3, probably no later than October 5. If we start to slip, we slip on the tax bill, then we will have to slip on something else. There is still the foreign ops appropriations which will take some time. I am not certain about the legislative appropriations bill. There are a number of matters that we have not gotten to yet which the majority leader has mentioned to me.

So again, I believe I speak for everybody on this side. We want to stick to this schedule which means all of us in this last 7 or 8 days will have to cooperate, be on the floor, and try to support the managers of this bill.

Mr. MITCHELL. Mr. President, I thank my colleague. I thank the distinguished chairman and ranking member for their cooperation.

Mr. BENTSEN. Mr. President, the managers of this bill on the Democratic side and the Republican side have been here diligently. We have worked the phones. We have worked the staffs and we have worked the Members trying to get them to offer their 100 amendments.

There is no way that we can consider 100 amendments. I assure you of that now. I know to each and every one of you, that amendment is important.

Let me tell you what you put at stake. We are talking about low-in-

come housing. We are talking about the boat industry that feels that it has been severely hurt by the tax on new boats. We are talking about the aircraft industry that has had to lay off thousands of employees and feels that part of that comes from the tax on new aircraft. We are talking about targeted jobs credits, the orphan drugs tax credit, we are talking about R&D. All of those are in, and they go down the tube if this system of ours does not work. That means that each of you must to some degree at least support me in what you are doing at the moment for the collective good of getting this major piece of legislation through.

They will come to me at 11 tonight, or 12 o'clock tonight, or 1 o'clock tomorrow morning, and say why are we doing this to ourselves. We are doing it because you will not come to the floor, and you will not get your amendments up, or that you insist that you have your amendments or all of your amendments, or you do not agree to a time limitation that is reasonable in trying to accomplish the objectives. Please, give us your cooperation and your participation.

Mr. President, I understand the distinguished Senator from Arkansas is prepared to offer his amendment.

I would like to ask if the Senator from Arkansas as I understand it would agree to 1 hour of debate on the amendment divided in the usual form between himself and the opposition to the amendment, the manager of the bill, and with no second-degree amendments permitted, then the time yielded back, and the Senate voting on or in relation to the pending amendment. Is that in general what the Senator is agreeable to?

Mr. BUMPERS. I am quite sure it is. I did not hear the last part of what was said.

Mr. BENTSEN. I have been handed by staff what I understand has been cleared either by the Senator from Arkansas or his staff.

Mr. BUMPERS. One hour time agreement equally divided. That is agreeable.

The PRESIDING OFFICER. Is there objection?

Mr. BENTSEN. If I may state it in its entirety: I ask unanimous consent that there be a 1-hour debate limitation on the amendment of the Senator from Arkansas equally divided in the usual form with no second-degree amendments permitted, and that when all time is yielded back, the Senate vote on or in relation to the pending amendment.

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

AMENDMENT NO. 3164

(Purpose: Striking 120 percent estimated tax safe harbor and providing a permanent extension of limitation on use of preceding year's tax in computing estimated tax)

Mr. BUMPERS. Mr. President, I send an amendment to the desk on behalf of myself, Senator CRANSTON, Senator KASTEN, and Senator KOHL, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself, Mr. KASTEN, Mr. CRANSTON, Mr. Nickles, Mr. KOHL, and Mr. WOFFORD, proposes an amendment numbered 3164.

Mr. BUMPERS. 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 972, beginning with line 17, strike all through page 973, line 13, and insert:

Clause (ii) of section 6654(d)(1(C) is amended by striking the last sentence.

Mr. BUMPERS. Mr. President, I am going to try to confine my remarks to 5 minutes because Senator CRANSTON and Senator KASTEN both wish to be heard, and I think they perhaps want to speak longer than I do.

This is a little bit complex, and I will try to unravel it so that the record will be clear on it. This vote is a litmus test for the small business people of this country. Make no mistake about that. You will shortly find a letter on your desk from the National Federation of Independent Business saying that this is as important to them as anything, just about, that has happened this year.

Mr. President, the amendment deals with trying to estimate what your income and tax liability is going to be for this year. Let me just go through the laws on estimated tax payments as they were, and as they are now.

The old law, prior to November 1991, applied to everybody, whether you made over $75,000 a year in adjusted gross income or under $75,000 a year. When you file your quarterly estimated tax return, you file an estimate for that quarter. If you filed an estimate saying that you would pay that year, in four payments, an amount equal to 100 percent of last year's tax liability or 90 percent of this year's tax liability, you were home free. The 100 percent rule was a safer harbor. If you underestimated that 90 percent or failed the 100 percent sale harbor you could be charged a penalty for under withholding. Everybody understood that, and that had been the law for some time.

In November 1991, we changed the law for people who make over $75,000 a year. We called those high-income people. That is not terribly high income in this day and time, but in November 1991, we said that all you people who make over $75,000 a year, all you hundreds of thousands of small business people, we want you to pay 90 percent of your tax liability for this year, the year you are in and we repeal the old 100 percent of last year's safe harbor. We said that all other taxpayers will remain the same under the old law and could use the safe harbor.

This created a problem. This created a problem for the people who make over $75,000 a year, because in order to estimate 90 percent of your current year's tax liability, you normally had to hire an accountant and that became a very difficult and expensive proposition. To try to figure out how much you are going to make this year and then pay 90 percent of it in estimated taxes is quite a chore. And bear in mind, this only applied to high-income taxpayers. They no longer had the right, under the 1991 law, to pay 100 percent of last year's tax and avoid the possibility of a penalty, though people who made under $75,000 a year did retain the right to use the 100 percent safe harbor.

The people in that so-called high-income category raised cain about the expense they were having to pay accountants to try to make sure that their estimates covered 90 percent of this year's tax liability. They were writing to me and to other Members of Congress and saying: For Pete's sake, fix this somehow or other. We do not mind paying 100 percent of last year's tax. We will even pay 110 or 115 percent of last year's tax liability, if you will just change the law and not make us have to compute this 90 percent figure. We just do not want to have to go through accountants and everything. We will pay 110 or 115 percent of what we paid last year if you will just change the law and give us a safe harbor.

So, all of a sudden, the Finance Committee said: We are going to one-up you. We are going to make this extra withholding applicable to everybody, whether you make $25,000 or $75 million a year. We are going to cover everybody, and the new rule is that you have to pay either 90 percent of this year's tax, which puts them right back in the same mode of having to go to the accountant, and pay all that expense, or, if you want to be sure you do not get tagged with a penalty, you pay 120 percent of last year's tax.

Mr. President, what that means is—and particularly when the country is in a recession—that if I made $100,000 in 1991 and I paid $30,000 in taxes this year, in filing my estimates for 1992 I must pay $36,000 in estimated taxes. But I may not make $50,000 this year. I made $100,000 last year, but I may not make $50,000 this year. But under this bill, I am obligated to file estimates and pay 120 percent of what I paid last year, which was $30,000. That means I am going to have to make estimated tax payments on $36,000 this year, even though I may have been making less than half what I made in income last year.

Mr. President, this is crazy. It is a form of extortion. It is a 20-percent interest-free loan to the Government of

the United States at the expense, mostly, of the millions of shopkeepers and small business people and individuals in this country who make estimated taxes who simply cannot afford to do it. It does not apply to corporations. So do not talk about big business. We are talking about subchapter S corporations—not C corporations—and proprietors, and partnerships, and individuals.

Mr. President, my amendment is very simple. It just strikes that part of the law with the new 120-percent requirement and we go back to where we were in November 1991. In 1991, that says so far as people who make under $75,000 they can still use the 100-percent safe harbor. We say to the high-income taxpayers that you must continue to pay 90 percent of this year's tax liability. We don't solve their problem and do nothing to protect them. We just protect those who would lose the 100-percent safe harbor.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty-two minutes.

Mr. BUMPERS. I yield 10 minutes to the Senator from Wisconsin.

Mr. KASTEN. Mr. President, I thank the Senator from Arkansas, the chairman of the Small Business Committee.

Let me say that, as the ranking member of the Small Business Committee, I am pleased to join my chairman on this issue. This is a key small business issue, one that should cut across, and does, with regard to the sponsorship of party lines. This is an issue that is important for small business men and women all across this country. Frankly, it is an issue that stands for, in my view, at least, some of the problems that we have been creating with overtaxing and overregulating small business owners across this country.

This is an issue not unlike the 10-percent withholding on interest and dividends. This is an issue not unlike section 89. This is an issue not unlike other issues which we have seen in which we pass something here in the Senate which looks like it might make some kind of sense if in fact people have been wildly underestimating their withholding.

Now all of a sudden we are forcing people to over withhold as a revenue raiser. We got ourselves dug into this trap, because we were looking for offsets, as I understand it, and the Finance Committee I am sure will respond later, but we were looking for offsets somehow in order to pay for extending unemployment compensation.

I have no problems with the extension of unemployment compensation. We did that and we have done it twice. But right now we have this crazy system whereby we are going to have a 120-percent requirement for quarterly estimating tax payments.

So, I am pleased to join with my chairman to strike the 120-percent requirement for quarterly estimated tax payments. This provision will place a tremendous burden on America's small businesses, small business men and women all across this country.

This provision basically has the effect of forcing small business owners to extend an interest free loan to the Government. They will be forced to pay the IRS more in estimated taxes than they actually owe and then file for a refund the following year when they file their tax return.

We should make one point absolutely clear: This is the section 89 type provision in this tax bill. It is like these other kinds of bills which we pass and then come back and say we never should have done it, it was done in the middle of the night, or whatever the conference committee put in, they needed revenue and all the other kinds of reasons we have heard.

Right now we are right here. We have the opportunity to knock this out now before it becomes law. Congress is going to have an awful lot of explaining to do when men and women next year try to come back and say why in the world are you forcing us, in effect, to overpay our taxes?

Basically, the way this provision would work is, because the quarterly estimated tax provisions are complicated, small businesses always have the option to pay in the current year precisely what it had in the prior year and, in effect, settle up at the end of the close of each year basically what was withheld at last year's level. Roughly speaking, they were faced with what we call in the language of IRS the 100-percent estimated tax safe harbor.

The tax bill today completely eliminates this so-called safe harbor. All small businesses are going now to be forced to pay 120 percent of prior year's tax or pay accountant's bills or tax penalties. Businesses in Wisconsin, for example, have been advised in order to keep right on tax payments they are going to have to take four, not one but four physical inventories each year.

This is the kind of thing going on out there, and it is crazy. The original purpose of the change proposed in the tax bill was for relief for taxpayers who have been adversely affected by the November 1991 change in the estimated tax rules. That change in 1991 required high income taxpayers to estimate their current year's income tax liability with what became an impossible degree of accuracy. The original purpose of the change proposed in the tax bill was to provide relief for those taxpayers who were adversely impacted by the November 1991 change in the estimated tax rules. The 1991 change required high income taxpayers to estimate their current year's income tax liability with an impossible degree of accuracy.

While H.R. 11 provides relief for those taxpayers adversely affected by the November 1991 changes, it does so by imposing the new 120-percent requirement on all small businesses. The reform should instead cover only those taxpayers subject to the November 1991 rules, not stretch it back to cover everyone. Senator BUMPERS and I therefore have urged the appropriate small business and accounting organizations to devise a substitute reform proposal.

The estimated tax provision in H.R. 11 will make life more difficult for small business owners. The changes proposed would require even the smallest businesses to either: hire accountants to try to accurately deposit 90 percent of what they owe on their anticipated income or seriously cut into their cash flow by paying 120 percent of last year's income. Small business owners will have to overpay the IRS just to ensure that they are not penalized.

Paying taxes is painful enough without taking away the safe harbor which allows small businesses to pay their taxes with certainty.

Every small business in America will instantly notice this change in the estimated tax rules. They will know it as soon as they file their next estimated tax payment. It will not apply until 1993, after the election, but it will turn up on the first estimate tax payment after that—due on April 15, 1993—just when taxpayers are angry about paying their 1992 taxes.

Mr. President, I have here letters from both the National Federation of Independent Business and the American Institute of CPA's supporting the Bumpers-Kasten amendment. I ask unanimous consent that these letters be inserted in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. KASTEN. Finally, small business owners spend enough time filling out forms and paying taxes without this onerous new burden placed on them by H.R. 11. I ask my colleagues to suppport this amendment and spare small businesses all over this country another of the seemingly unending burdens that all of us continue to place upon small business men and women, small business owners across this country.

This ought to be repealed now before we dig ourselves into one more big mess that we will have to dig ourselves out from under in the future.

EXHIBIT 1

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, August 6, 1992.

Hon. ROBERT W. KASTEN, Jr.,
U.S. Senate, Washington, DC.

DEAR BOB: Buried in H.R. 11 are 20 lines of proposed tax changes that will drive your small business constituents crazy. These changes will needlessly complicate their lives and eat into their cash flow.

Section 3002 of H.R. 11 changes the way most small business owners pay the taxes they owe the federal government. It will force them to either overpay their taxes or risk fines and penalties for under paying.

Small business owners must estimate how much they will earn in a year and make quarterly tax payments based on that estimate. Current law requires small business owners to pay according to one of two methods.

The first method requires business owners to pay taxes on 90% of what they expect to earn. If the business owner underestimates how much the business will earn and pays too little, penalties and interest will have to be paid.

Estimating future earnings is very difficult for small business owners, who usually are unable to accurately predict how much they will earn in the future. Business owners who choose to deposit under this first system usually hire accountants to help them accurately determine what they will owe.

The second method allows business owners to avoid having to project future earnings. Under this system, business owners just pay taxes on what they earned last year. The tax code allows small business owners to just assume that they will earn about as much this year as they did last year. As long as these business owners pay 100% of what they owed last year, they will not be subject to penalty, and they will be allowed to make up any shortfall at the end of the year.

Most small business owners do not use the first method because it is expensive to hire accountants to determine what the businesses' future profits will be. Most of them just use the second method and pay 100% of what they owed last year. It is easier and cheaper.

H.R. 11 changes this system and forces small business owners to either pay 90% of this year's expected earnings or 120% of last year's earnings. This change is nothing short of extortion. Small business owners are forced to either hire accountants to accurately gauge expected income or pay 20% more than they do currently.

According to a recent NFIB Foundation/VISA survey, "cash flow" is the third most important problem faced by small businesses today. Section 3002 will simply exacerbate this situation.

On behalf of the more than 550,000 members of the National Federation of Independent Business I urge you to support any attempt to strike section 3002 from H.R. 11. Any such vote will be a Key Small Business Vote for the 102nd Congress.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS,
Washington, DC, August 6, 1992.

Hon. ROBERT KASTEN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR KASTEN: On behalf of the American Institute of Certified Public Accountants, I would like to commend you and Senator Bumpers for your efforts at narrowing the focus of the individual estimated tax changes presently before the Senate in the urban development bill. We support your efforts to target the new estimated tax requirements in H.R. 11 primarily to the taxpayers who are subject to the November 1991 rules.

As approved by the Senate Finance Committee, the individual estimated tax provision of H.R. 11 would replace current law with a 120 percent of prior year's tax "safe harbor" for all individual taxpayers in 1993. This is an increase from the 115 percent "safe harbor" passed by the House on July 2. Moreover, unlike the House version, there is no elective feature to apply the new rules to 1992.

As you pointed out in the August 5 letter to your colleagues, this subject started last November when Congress enacted changes of great complexity to the "90 percent of current year" exception. The AICPA immediately recognized last November's changes as unworkable, making it impossible for many taxpayers to comply. As a result, we proposed various options to accelerate estimated tax payments which could be accomplished in a manner which retains the certainty and simplicity of previous law, among which was a percentage safe harbor recommendation that would apply only to taxpayers with adjusted gross incomes exceeding $75,000.

Unfortunately, we are now seeing a change in the purpose of the individual estimated tax "safe harbor" from certainty and simplicity to revenue raising. The tax-writing committees appear to have recognized the simplification approach as a potential significant revenue source to fund a comprehensive tax package. To illustrate, the House (115 percent) approach is scored as a $3.0 billion revenue raiser; the Senate (120 percent) approach would raise $3.9 billion during the 5-year window used for budget purposes.

The AICPA recognizes that the higher the percentage and the broader the application, the less acceptable this approach becomes. Thus, while we continue to support a safe harbor that contains a threshold in excess of 100 percent, we believe our membership and their clients, the taxpaying public, may well not choose such a safe harbor if the rate is as high as 120 percent. At that level, many more taxpayers will prefer to go through quarterly calculations of the likely current year's tax, thus defeating the original purpose of our proposals: simplification.

Again, we appreciate your efforts to correct the unworkable November rules and to protect the interests of the many small business owners who may be affected by the various proposals presently being considered. Please call us if we can be of further assistance.

Sincerely,

GERALD W. PADWE,
Vice President—Taxation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I yield myself 7 minutes.

Mr. President, I speak as a former small business owner and I understand some of the concerns. But let me set the record straight on some of the statements made here.

No small businessowner is mandated, obligated is the term that was used in this debate, to use this 120 percent. That is an option. When it comes to the estimate, the estimate to get your 90 percent payment, not some guess-off here, to try to base your judgment, you feel like you want a little cushion you can put a little cushion in. That is at your option.

If you miss, then you have an interest charge on the deficiency. That is what the charge is. If you have something unexpected come up in the next quarter or that quarter, that you had no information on that one, it came as a surprise, you can amend. There is no penalty for that.

But let me get to another point: This amendment, proposed by the distinguished Senators from Arkansas and Wisconsin, is going to give us a deficiency on this bill of $1.3 billion; $1.3 billion, because my friends do not like one of the pay-fors.

I understand that. Pay-fors are rarely popular. But you know this was offered by the administration, the 120 percent option, offered by the administration to pay for first-time homebuyers. I do not hear either one of these Senators ready to give that one because we think that is an initiative that is going to move this economy. And we have all sorts of other places in here that this $1.3 billion is helping to pay for, whether we are talking about increase in research and increase in productivity of this country and making our industry more competitive, or whether we are talking about low-income housing to try to see that we have housing for our people who are having hardships.

Mr. President, so we have numerous economic growth initiatives. Health insurance reform that would be endangered by this amendment. And I will certainly be making a point of order that it does bring about that kind of a loss.

I have heard arguments that the 90 percent rule is just too difficult to figure. First, note that that the requirement is for 90 percent; a cushion is provided to provide leeway for the estimation inherent in the rule. And remember it is not requiring that this be done for the full year. They are allowed to look at their information current as of 15 days before an estimated tax payment is due and then assume that is a pace at which they will earn the income through the year.

That is called the annualization method. And any surprising jumps in income later in the year do not matter—that is not information that is in the taxpayer's hands at the time of the estimated payment. And, if that is not enough, then they have the option to go ahead and choose the safe harbor. But no one mandates that on them.

That is a provision to add simplicity and certainty to taxpayers. And simplicity and certainty sometimes, as here, comes at a price, because that simplicity and certainty are worth something.

Mr. President, it is always easy to cut back on these revenue raises because they are generally not popular. But there is a price paid for these initiatives that we put into this legislation to get this economy moving again. And I think it is a serious mistake if we endanger those initiatives.

Therefore, I will be making that point of order. I reserve the remainder of my time.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Would the chairman yield me 5 minutes?

Mr. BENTSEN. I am delighted to yield 5 minutes to the manager for the minority.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I thank the Chair.

I am going to agree with the chairman on this. Let me explain what the situation is and why the rule we have, which was designed by the accountants for small business people and all other business people—they brought it to us—I think it is fair.

First, let us assume you are just an average citizen, you are Joe Camel and you did your work all year and you make $20,000 a year and your taxes are withheld. You are being withheld 100 percent.

If you are just an average citizen, you pay every week, or whenever your pay period is. So let us not talk about some people getting an unfair treatment.

If there is any unfair treatment at all, it is to the poor wage earner who has his money taken out every time he gets a paycheck. And we want everybody else to sort of roughly be equivalent to what we do to the average citizen when we take the money out as we go along.

So the old law, this is pre-1991, the old law said we will allow you to avoid a penalty. You are now an independent businessperson. You do not have withholding. You pay estimated taxes every quarter. You do not pay them every week, or every 2 weeks, or every month like the average wage earner does when it is withheld. You pay it every quarter and you have to estimate what your income is going to be.

Here is where the difficulty was. Some people said, well, it is hard to estimate. And everybody is required under the law—the average wage earner and everybody else—to pay at least 90 percent of their taxes as they go along anyway. That is the law. That is the old law, present law, this bill. Nothing has changed that you are supposed to pay 90 percent as you go along.

The difficulty came for some people in estimating what was going to be the 90 percent. If he made a lot of money one quarter and not a lot another quarter, they were not quite sure where they were.

So the old law said, OK, in order to avoid this confusion, Mr. and Mrs. Taxpayer, we will allow you this year to pay 100 percent of the taxes that you paid last year. And if you did that, there would be no subsequent penalty for underpaying your taxes.

So let us say you made $100,000 last year. And let us say that you paid $30,000 of it in taxes. Next year, you make a million dollars. If you pay the $30,000, under the old law, you do not have to pay any taxes on the million dollars until April 15, until the taxes come due. You are protected because you paid the $30,000.

Lots of people were using this as a float, and simply paid what they paid last year. Their income was going up tremendously and they went by for a year and paid very little taxes on what they were ultimately going to pay for that year.

So we said this 100-percent law, this 100-percent prepayment is not working. Last year we just got rid of it. We said, OK, if you are over $75,000 a year, we are going to treat you now just like the average taxpayer and you have to pay at least 90 percent of your taxes as you go along. We got rid of any prepayment. It is 90 percent.

Bear in mind, still most of these people pay quarterly. They do not have checks where they get wages.

Well, then we really got into a brouhaha. People complained they could not estimate their taxes.

So the CPA's came to us and they said, OK, let us go back to the so-called safe harbor. If we pay a certain amount, a certain amount of the taxes we paid last, there would be no penalty. And we came up with the 120 percent figure.

To use the example I made again: You made $100,000 last year, paid $30,000 in taxes. This year you make a million dollars. We say, all right, if you will pay 120 percent of $30,000—$36,000—there will be no penalty next year. Even though you may owe $200,000, $300,000, $400,000 on your million of income, there will be no penalty.

That is what this does. And it lets everybody be safe if they pay nothing more than what they paid last year, 120 percent of what they paid last year.

If you do not want to do that, you can just go along paying your 90 percent every quarter the way the basic law requires in any event and the same way—could I have 2 more minutes?

Mr. BENTSEN. I yield 2 more minutes to the Senator.

Mr. PACKWOOD. I thank the Senator.

The PRESIDING OFFICER. The Senator is recognized for 2 more minutes.

Mr. PACKWOOD. You can go along, pay your 90 percent just like the poor devil who is a wage earner does who makes 20,000 to 25,000 bucks a year, and the employer takes it out of his check every time the paycheck comes. They are not paying 95 percent. They are paying 100 percent, and in some cases they are overwithheld.

So this does give certainty. If you make over $75,000 a year, we will give you two choices. You can pay only your withholding, 90 percent—and that has been the law all along, that has not changed—or you pay 120 percent of what you made last year and there will not be any penalty at all.

Frankly, people do not pay 120 percent unless their incomes are going way up. Treasury has reviewed the returns, and 95 percent of the taxpayers who will pay the 120 percent have tax liabilities greater that then 120 percent of last year. So they are still going to live on the float and save some money and they will be saved from the penalty.

That is the fairness of it. I hope very much that when the point of order is raised by the chairman, the Senate would stand by the point of order, not only because of the fiscal implications but because what we have tried to do is fair.

I thank the Chair.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mr. CRANSTON].

Who yields time?

Mr. BUMPERS. How much time would the Senator from California like?

Mr. CRANSTON. About 6 minutes.

Mr. BUMPERS. I yield the Senator 6 minutes.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. Mr. President, I rise in support of the motion offered by Senator BUMPERS, Senator KASTEN, and myself to strike section 3002 of H.R. 11, which would present millions of taxpayers with the following dilemma: Either to automatically pay 120 percent of their previous year's tax in quarterly installments, even though their income may be declining, or base their quarterly payments on their estimate of what their tax actually will be for the year and pay a penalty they are more than 10 percent off the mark in underpayment.

It would be grossly unfair for the Government to force such a heads-I-win-tails-you-lose choice on millions of individuals whose incomes vary from year to year—farmers, ranchers, small businessmen, merchants, salesmen, retirees, and people in the entertainment industry among others.

Under section 3002, such taxpayers will be forced to decide between paying out 20 percent more taxes than they may in reality owe or hiring accountants to go over there estimated tax liability every 4 months in an attempt to make sure of their accuracy, when even an accountant may be unable to do so.

It is quite understandable that accountants thought his was a great change in the law. A lot more business for them would result.

Either way, the taxpayer loses—both in money and in fair play. The only one who gains is the U.S. Treasury which will pick up an estimated $1.3 billion over the next 5 years under this provision.

Granted, the Treasury needs the money. But so do the taxpayers. Why should they have to shoot dice with the Government for it?

Right now, under current law, the situation is outrageous enough. Taxpayers who file quarterly estimates have to outguess the future with at least 90 percent accuracy or be penalized.

And they can avoid any risk of penalty by paying on a basis of 100 percent of their previous year's tax. That is tough enough.

I ask this, Mr. President: Who knows for sure on April 15 or June 15 or even October 15 what their earnings will be by December 31?

If you start out expecting to earn less than in the previous year and pay less in your quarterly payments, but wind up earning more, you pay a heavy penalty for doing well economically. That is very unfair. It is unwise policy. It is ridiculous. That should be changed as soon as possible.

But, meanwhile, let us not make the situation even worse. There is no equitable reason to make life any tougher for the American taxpayer.

Mr. President, a viable tax system should be fair and aboveboard. It should not rely on trickery and overpayment for revenues. Only then, will taxpayers be willing participants in this or any system.

Unfortunately, section 3002 of H.R. 11, as it currently stands, is a long, far cry from fair for individuals and small businesses whose income may fluctuate and who pay their taxes on a quarterly estimated basis.

Section 3002 of H.R. 11 establishes a safe harbor of 120 percent for all taxpayers. This is not as innocuous as it sounds. Most taxpayers now have a safe harbor of 100 percent.

Let me explain what this means and how we got here.

Prior to 1991, a taxpayer could avoid penalties for underwithholding by either estimating income and quarterly tax liability with 90 percent accuracy or paying 100 percent of the previous year's tax liability.

As my colleagues may remember, however, in November 1991 we repealed the 100-percent safe harbor rule for certain high-income taxpayers. The effect of that action was to revoke the 100-percent safe harbor for some taxpayers altogether and require quarterly tax payments from these individuals under the 90-percent rule. These people, numbering 400,000, must go through the aggravating and difficult exercise every 3 months of calculating income and tax liability every single year.

Everyone else whose income fluctuates significantly must either expend the time and money for quarterly calculations, risk making a costly and penalty invoking error, or simply use the 100-percent safe harbor rule.

But section 3002 goes beyond even the absurdity of that, Mr. President. It requires that all taxpayers with fluctuating income either go through the quarterly exercise—the 90-percent test—of estimating or pay 120 percent of the previous year's liability.

This seemingly innocuous change raises two significant concerns for this Senator.

First, and perhaps most importantly, the 20-percent increase in the safe harbor rate is, in my estimation, an underhanded way of forcing individuals to lend money—interest free—to the Federal Government.

I say forced, Mr. President, because as I pointed out earlier, the alternative to paying 120 percent of the previous year's tax liability is to calculate income and liability with at least 90 percent accuracy every 120 days.

Second, section 3002, in making the subtle change of applying the 120-percent safe harbor to all taxpayers greatly increases revenues collected from countless individuals.

That explains how this section alone is estimated to raise $1.3 billion over 5 years.

That staggering sum is raised because this section requires that anyone with fluctuating income, regardless of how much they earn, must either calculate taxes quarterly or pay 120 percent of the previous year's liability.

Let me illustrate, Mr. President:

Say an individual works in a company that has profit sharing for its employees. By the way, that is how the majority of high technology companies attract talent in my home State of California.

Through the majority of the year an employee's taxes are withheld from his or her paycheck.

But what if in the last quarter, the employee is given a bonus? Well, under section 3002, that employee might be penalized for up to 10 percent of the amount paid if he or she fails to make an estimated payment in the correct amount under the 90-percent rule.

Are these the people we want to force henceforth to file quarterly statements or overpay their taxes?

This is fiscal smoke and mirrors at its best.

Have we grown so comfortable with being a debtor nation that we now embrace borrowing, interest free, from America's taxpayers?

Pay as you go? Tomfoolery. Mr. President, we are merely borrowing from year two to pay for what we want in year one.

Section 3002 allows the Federal Government to rely upon revenue from payments in advance of liability or, in the alternative, penalties paid by those who may have unwillingly miscalculated their tax liability.

If this becomes law, the Congress could truly be accused of getting taxpayers coming and going. At a time of record disillusionment with Government, Mr. President, I suggest that this is the very kind of thing we should avoid.

My vehement opposition to section 3002 should not be construed as an embrace of current law. I am afraid that because of budget constraints, the current law cannot be altered now, but I hope that in the next Congress tax policy can be turned back to the pre-1991 reality—when all taxpayers could pay what they owed and the 400,000 currently affected were not forced to file quarterly returns.

Meanwhile, I recommend that my colleagues join with Senators BUMPERS, KASTEN, and me in striking section 3002 of this bill.

The PRESIDING OFFICER. Who yields time? The Senator from Arkansas.

Mr. BUMPERS. Mr. President, might I inquire of the distinguished manager of the bill, the Senator from Texas, if he wants to yield back time? Or does he and the ranking Member wish to speak further on the amendment?

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 12 minutes.

Mr. BUMPERS. How much time remains for the opponents.

The PRESIDING OFFICER. They have 19 minutes.

Mr. BUMPERS. I yield myself 5 minutes, Mr. President, or such time as I may use.

The PRESIDING OFFICER. If the Senator from Arkansas will suspend, I think the chairman will answer his question.

Mr. BENTSEN. Did the Senator from Arkansas have an inquiry of the manager of the bill?

Mr. BUMPERS. I was just asking, I think I have 12 minutes remaining and the time controlled by the Senator from Texas is 19 minutes. I wondered if he wanted to speak further on it or if he wanted to just try to wrap this up.

Mr. BENTSEN. I think we have some further points we would like to make.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield myself such time as I may use.

Mr. President, first of all I would like to add Senator NICKLES and Senator KOHL as cosponsors.

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

Mr. BUMPERS. Mr. President, I want to try to summarize this so all my colleagues will understand precisely what the issue is here. Before the Finance Committee bill was passed out of committee and came to this floor, before that happened we told the high-income people of this country—and we classify those as people who make over $75,000 a year—you must pay 90 percent of the tax you are going to owe for this year, 1992. And if you underestimate that, you are going to pay a penalty.

In the past we had said if you do not want to go to an accountant every 3

months and have them recompute your income and recompute your estimated tax liability, if you do not want to go through all those accounting experiences and expenses, we will let you pay 100 percent of what you paid last year. That is called a safe harbor. If you pay 100 percent of what you paid last year, you are home free.

I am going to tell you something. If this amendment does not pass, the Members of this body are going to be looking for a safe harbor because we are going to be inundated with thousands of letters from the small business community of this country.

In November 1991, the Finance Committee said for high-income taxpayers in the future you have to estimate your tax on one basis only and that is 90 percent of what you make this year. You no longer can pay 100 percent of what you paid last year and be assured that you are safe from a penalty. The accounting fees, when they have to compute 90 percent of this year's tax—the accounting fees are astronomical.

Mr. President, I have a letter here from the American Association of Certified Public Accountants that said this is a terrible statement for high-income taxpayers. You ought to change this.

So the Finance Committee came along and they said not only do the wealthy people who make over $75,000 over a year have to come into compliance with this 90-percent test, we are going to change the rules to make them worse and we are going to make everybody comply, rich and poor, under $75,000 a year and over $75,000 a year with a new 120-percent test.

What did they say? In the future you have two options again. The first is the 90 percent option, which means you have to pay the accounting firm that does your taxes a big fee every 3 months to recompute your income and recompute your estimate. And if you do not want to do that—listen to this—if you do not want to do that, you send us estimated tax payments equal to 120 percent of what you paid last year. If you paid $50,000 last year, this year you send us $60,000. If you paid $50,000 in taxes last year, you send us $60,000 in four equal payments of $15,000 each and you are off the hook.

You have to compute, first of all, how much are my accounting fees going to cost me if I go the 90 percent route. If your accounting fees are going to be $10,000 you are probably no worse off of sending the Government this extortion they demand of an extra $10,000.

This is not just a 20-percent loan from the least among us to the U.S. Treasury, it is extortion. And it is not just a 20 percent loan. What if you paid $50,000 last year on a $150,000 income and this year you do not know what you are going to make but you know it is less than $150,000? And you do not know that until 6 months into the year when you have made that option. You are going to wind up paying a 40 percent premium, interest free to Uncle Sam.

That is what I call, on behalf of the committee—and I know both the chairman and the ranking member of that committee know I have the utmost respect for them—this is pure and simple a revenue raiser. That is all it is. It is raising $1.3 billion off the people who can least afford to pay it. It is what I call taking a bad situation and turning it into a disaster.

I yield the floor and reserve the remainder of my time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I yield myself such time as I need.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BENTSEN. You bet it is a revenue raiser. Of course it is a revenue raiser. I have stated that from the beginning. It is one the administration proposed, 120 percent. This had helped pay for an incentive for first time home buyers, trying to get this economy moving again. You cannot have those kinds of tax deductions or incentives unless you pay for them someplace.

I understand it is no fun to do the revenue side, the raising side of it. It is always fun to pass out those incentives, those tax cuts. But if you do not pay for them, then you are $1.3 billion short. And that endangers all these other things that we put in there in the way of initiatives, to try to get the economy moving again, whether we are talking about low income housing, or we are talking about research and development, or we are talking about first time home buyers, or we are talking about enterprise zones for the inner cities where you have high unemployment and poverty, or we are talking about an enterprise zone for a rural area where you have high poverty and unemployment. But they have to be paid for. We do not want to add to this deficit. We have gone that road long enough.

So, the responsible thing to do if you are going to have these initiatives is to pay for them. And when you talk about the people who are hurt the worst that they have to do 120 percent, that is 120 percent because they are making more money than they did the year before.

You are talking about 90 percent, and not trying to forecast it for a year but talking about quarter by quarter. And only on the information you have at that time. If you have something unexpected happen, you have the opportunity to amend your return without penalty for that one.

No. It is a fair proposal. It does give certainty to the taxpayer. It does require a somewhat larger payment, in the way of 120 percent, than it has in the past.

It is in the administration proposal and it does help us make this bill revenue neutral as we do these incentives, these initiatives. So at the proper time, I will be raising the point of order. I now yield to my colleague, the manager for the minority.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I want to emphasize once more the effect of this bill on those who pay the 120 percent. According to the Treasury, more than 95 percent of the individuals paying estimated taxes owe 120 percent or more of their last year's tax liability. Ninety-five percent of the people who choose to pay this 120 percent do it for a very specific reason: They would rather do that than pay 90 percent of their current liability because it is going to be a lot more than paying the 120 percent now and then paying a lot more a year later.

I am going to emphasize once more the way this works. You make $100,000. You paid $30,000 in taxes last year. You make $1 million this year and let us say your taxes are going to be $300,000. If you want to follow the 90 percent rule, you pay that $300,000 in equal installments through the year, $75,000 every quarter. But if instead of doing that you make a payment of 120 percent of what you paid last year, $36,000 instead of $30,000, then that is all you have to pay and there is no penalty. When you finally get around to April 15 of next year and pay your $300,000, there is no penalty for the underpayment of your taxes during that entire year and 95 percent of the people who pay the 120 percent pay it because it is going to save them revenue during the year, it is going to save them money, they are going to have the float. They know what they are doing and they know exactly why they pay the 120 percent: To save them money.

Once more, I want to compare this to the average wage earner making $15,000, $20,000, $30,000, $40,000 a year. From that poor devil, we withhold from his or her paycheck, every week, 2 weeks or month, however often they are paid and they are usually not paying 90 percent of their taxes, they are paying 100 percent or more of their taxes as they go along.

So this 120-percent so-called safe harbor was suggested to us by the accountants who do the tax returns of the people who use the safe harbor. This was not some goobledygook the tax committee dreamed up or some schemers in the bowels of this building to do in the little person, it was given to us by the accountants of the people who do the returns for the very people who use the safe harbor.

Should we expect the people—and this only affects those who make over $75,000 a year—should we expect to at-

tempt to make an argument that is fair in essence for 95 percent of the taxpayers to underpay their taxes—underpay them—and to say to the average Joe or Jane in this country, you are going to pay 100 percent of your taxes every week, 2 weeks, 4 weeks, however you are paid. So this amendment is both fair and simple. And I will say it again, an awful lot of people will pay the 120 percent because they will know in paying the 120 percent ahead of time, they are saving themselves a whale of a lot of money during the year when they would otherwise be paying 90 percent of the entire tax liability that they are going to owe for that year, they are going to be paying for it as they are going along and that is going to be a lot more than the 120 percent.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I am willing, if the managers of the bill are willing, to yield back the remainder of my time and stack this vote for approximately 1 hour from now.

Mr. President, can I have the attention of the distinguished Senator from Texas?

Mr. PACKWOOD. Mr. President, could I ask the distinguished Senator, we are trying to aid the majority leader, and I think we have a unanimous-consent request. I would like to get a unanimous-consent agreement now for amendments. I want to get it now so we have something in order when we finish the vote on the Senator's amendment.

Mr. BUMPERS. Without the time being charged to us.

UNANIMOUS-CONSENT AGREEMENT

Mr. PACKWOOD. Mr. President, I ask unanimous consent that after final disposition of the Bumpers amendment, the following amendments shall be in order: One, McConnell on missing children and the parent locator, with 10 minutes equally divided in the usual manner; two, a second McConnell amendment on professional fees paid in takeovers, 30 minutes equally divided and; three, a Murkowski amendment on military separation payments eligibility for rollover to IRA's, and I am not suggesting a time limit on that amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. And no second-degree amendments.

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

Mr. PACKWOOD. Mr. President, I thank the Senator from Arkansas.

Mr. BENTSEN. Mr. President, three of the Members have been called down to the White House for a meeting and will be back at 4 o'clock and they asked that we stack these votes on the Bumpers amendment until 4 o'clock, if that is agreeable.

Mr. BUMPERS. Mr. President, I have no objection to that. I am perfectly happy to vote at a time certain, say, 4 p.m. or thereabout.

Mr. DODD. Mr. President, I rise in support of the amendment offered by the Senator from Arkansas [Mr. BUMPERS].

In my State of Connecticut, small businesses are literally dying on the vine, mainly because they continue to have trouble getting the credit they need to grow and expand. For the past 3 years, so many of us in Connecticut have been working to counteract this credit crunch, and finally, in recent months, we have begun to make some headway.

It is critical that small businesses recover. They are the engines of economic growth and job creation in Connecticut and across the country. But the prospects for recovery are dampened when we saddle small businesses with complicated reporting requirements or with requirements for overpayment of taxes.

Our tax collection system should strike a balance between rising revenues and permitting economic growth. The Bumpers amendment would restore that balance.

If the Bumpers amendment fails, small business owners will be left with an unfair dilemma. To keep out of the IRS's doghouse, they could spend hours calculating 90 percent of their tax liability for the current year. Or they could pay 120 percent of the previous year's tax liability, and risk using needed capital to give the Government an interest-free loan.

Under either alternative, economic growth is diminished. Business owners are forced to divert scarce resources away from running their businesses—for no good reason. That is unwise, and is exactly the wrong signal to send at a time when we should be promoting economic recovery and job creation.

I urge my colleagues to support the more balanced approach to tax collection embodied in the Bumpers amendment.

Mr. CHAFEE. Mr. President, when Congress revised the individual estimated tax payment safe harbor last November, I was concerned that we were adding a level of complexity to the law that was unnecessary. Prior to that time, the law contained two fairly simple methods for determining an individual's estimated tax payments. The first requires the taxpayer to pay 90 percent of the current year's income tax liability. But in many instances, taxpayers are unable to accurately estimate their current year's income until after the year has ended.

To remove this burden from small businesses, a second method allowed these taxes to be paid based on 100 percent of the tax liability for the prior year. However, a special rule was enacted last year, as part of the passage of extended unemployment benefits, which limits the availability of this safe harbor. Individuals whose income increases significantly over the prior year are no longer able to utilize this method.

Taxpayers and tax practitioners found that this new rule was overly complex. To simplify it, the bill proposes to allow all taxpayers to utilize the safe harbors that were available before last year. However, the proposal increases the prior year's tax safe harbor from 100 to 120 percent.

I am concerned that this increase will burden small businesses. I am sympathetic to their concerns that this proposal results in an interest-free loan to the Federal Government. However, I must reluctantly oppose Senator BUMPERS' amendment because it would adversely affect the deficit.

I hope that a compromise can be found in the near future that will minimize the impact of this proposal on small business men and women without increasing the deficit.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the votes ensuing on the Bumpers amendment, points of order, and anything attendant thereto be stacked at 4 p.m. this afternoon.

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

It is the Chair's understanding that the manager of the bill has yielded back all time on the Bumpers amendment.

Mr. BUMPERS. Mr. President, I want to make one statement, and then I am prepared to yield back the remainder of my time.

I just want to say to my colleagues that the Bumpers-Kasten-Cranston amendment only helps the people who make less than $75,000 a year. It does nothing for people who make over that because it repeals a sunset provision in the new 1991 law.

Mr. President, I am prepared to yield back the reminder of my time.

Mr. BENTSEN. Mr. President, I am prepared to yield back my time.

The PRESIDING OFFICER. All time on the Bumpers amendment has been yielded back.

Mr. BENTSEN. Mr. President, at this point, I raise the point of order that the pending amendment violates section 311 of the Congressional Budget Act of 1974.

Mr. BUMPERS. Mr. President, I move to waive the Budget Act for consideration of my amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN. Mr. President, it is my understanding under the agreement that these will be voted on at 4 o'clock.

Mr. BUMPERS. That is right.

The PRESIDING OFFICER. The Senator is correct. Let me make sure. This

is the Chair's understanding of the unanimous-consent agreement.

Mr. PACKWOOD. Mr. President, I will move to vitiate that so the Chair will not have to understand it.

UNANIMOUS-CONSENT AGREEMENT VITIATED

Mr. PACKWOOD. Mr. President, I ask unanimous consent to vitiate the unanimous-consent agreement which was just ordered for the two McConnell amendments and a Murkowski amendment. We operate on comity around here. There is one Senator who may want to object to Senator MCCONNELL's time request.

Senator McConnell is still coming. As I understand it, he can offer his amendment when he gets here, so it will simply be without a time agreement. I simply ask that we vitiate the previous unanimous-consent order.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Chair's understanding of the order now is that the vote on the budgetary waiver offered by the Senator from Arkansas will occur at 4 o'clock, and in the meantime since the unanimous-consent order was vitiated, the floor is available for amendments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3167

(Purpose: To amend title IV of the Social Security Act to provide that the Secretary of Health and Human Services shall enter into an agreement with the Attorney General of the United States to assist in the location of missing children)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] proposes an amendment numbered 3167.

Mr. MCCONNELL. 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 1699, between lines 15 and 16, insert the following:

SEC. 7135. AGREEMENT TO ASSIST IN LOCATING MISSING CHILDREN UNDER THE PARENT LOCATOR SERVICE.

(a) IN GENERAL.—Section 463 of the Social Security Act (42 U.S.C. 663) is amended by adding at the end the following new subsection:

"(f) The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Parent Locator Service established under section 453 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request for the purpose of locating any parent or child on behalf of the Office of Juvenile Justice and Delinquency Prevention for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

(b) CONFORMING AMENDMENT.—Section 463(c) of such Act (42 U.S.C. 663(c)) is amended by striking ("a), (b), or (e)" and inserting "(a), (b), (e), or (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1992.

Mr. MCCONNELL. Mr. President, I rise today to offer an amendment to the tax bill that will go a long way in helping to locate missing and abducted children. Specifically, my amendment authorizes officials at the Department of Justice to use the Federal Parent Locator Service at the Department of Health and Human Services to track and hopefully find children who have been abducted by noncustodial parents.

In 1975, Congress created the Federal Parent Locator Service, as a system that could be used to track absent parents in order to enforce child support obligations. This service has proven invaluable to many single mothers who have been abandoned by irresponsible fathers.

Realizing the potential of the Federal Parent Locator Service for tracking missing parents, in 1988 Congress gave the State Department access to the system for the purpose of tracking international child abductions in the United States. This action was in response to our Nation's commitment under The Hague Convention on Civil Aspects of International Child Abduction.

The amendment I am proposing today follows the same legislative precedent set in 1988, when Congress authorized the use of the Federal Parent Locator Service by the State Department. My amendment would lift the bureaucratic roadblocks that have prohibited the Department of Justice from working with the Department of Health and Human Services to use the Federal Parent Locator Service—on a very limited basis—to locate children who may have been abducted by a noncustodial parent.

In the past 10 years, 70 percent of all child abductions in the United States involved a noncustodial parent.

Most experts on child kidnapping agree that the ability to quickly locate noncustodial parents is crucial to solving the majority of missing children cases. And as we have learned the hard way, a few days can mean the difference between life and death in missing children cases.

Over the past year, I have met with officials from both the Department of Health and Human Services and the Department of Justice. Representatives from each of these departments have made it clear that neither group is opposed to my amendment. Apparently, what has impeded these two departments from working together on missing children is the language that was adopted by Congress during the establishment of the Federal Parent Locator Service in the 1970's.

At that, Congress expressed understandable concern over the confidentiality of the information handled by the Parent Locator Service. Such concerns included individual privacy rights and proper use of the information.

Since then, effective regulations have been issued that ensure careful use of the system and the protection of individual privacy rights. I have been assured that giving the Department of Justice access to the system will not endanger or weaken any of the existing restrictions and protections.

Further, the Congressional Budget Office has determined that my amendment will not cost the taxpayers any additional money. In other words, this is cost-effective legislation that has the potential to locate thousands of missing children throughout America.

This year, thousands upon thousands of children will be abducted by a noncustodial parent. My amendment will allow our law enforcement officials to move quickly in locating these noncustodial parents and the children before it is too late.

Mr. BENTSEN. Mr. President, I ask unanimous consent that when the Senator from Iowa [Mr. HARKINS] offers his tobacco amendment, there be 1 hour equally divided with no amendments in order prior to the motion to table.

Further, I ask unanimous consent that if the amendment is not tabled that the Senator from North Carolina [Mr. HELMS] be recognized to offer his second-degree amendment relating to the same subject; and, that amendment be debated for 30 minutes to be equally divided in the usual form.

Finally, I ask unanimous consent that after the disposition of the Helms amendment, the Senate proceed to vote on the Harkin amendment, as amended, if amended.

Mr. President, we have discussed this matter with the distinguished Senator from Iowa, and the Senator from North Carolina and the involved parties, and this states their agreement.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object, I happened to be off the floor. If I could eyeball the unanimous-consent agreement.

Mr. BENTSEN. It is my understanding that the Senator looked at this and concurs. Does he desire that I restate it?

Mr. HARKIN. If it is the one I looked at, no.

The PRESIDING OFFICER. If there is no objection, without objection, it is so ordered.

Mr. McCONNELL. Mr. President, I ask if the amendment I offered has been cleared.

Mr. BENTSEN. I say to the Senator from Kentucky that I have looked at this amendment. I consider it a very worthwhile purpose, in being able to promote parents being involved in such custody suits. From this side, I know of no objection. We are prepared to agree to it.

Mr. PACKWOOD. We found it a fine amendment and are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3167) was agreed to.

Mr. PACKWOOD. 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. PACKWOOD. 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. PACKWOOD. Mr. President, I have checked with the chairman, and I understand that the Senator from Kentucky has one more amendment; is that right?

Mr. McCONNELL. Yes.

Mr. PACKWOOD. I ask unanimous consent that when this McConnell amendment is disposed of, that Senator MURKOWSKI be recognized to offer an amendment after that; and that may occur before 4 o'clock. We are going to vote at 4 o'clock on the Bumpers amendment. If Senator McCONNELL finishes before then, we would ask Senator MURKOWSKI to be prepared to go then. If not, he can go after Senator McCONNELL'S amendment and after the vote.

Mr. HARKIN. Reserving the right to object, Mr. President, can I hear that unanimous-consent request again?

Mr. PACKWOOD. Senator McCONNELL has one more amendment that he is on now. Senator MURKOWSKI would like to go next. We are not asking for a unanimous consent on time or anything else, just that he be recognized next to offer an amendment, and if Senator McCONNELL finishes before 4 o'clock, Senator MURKOWSKI would start. At 4:00, we vote on the Bumpers amendment.

Mr. HARKIN. I am just wondering when I would be able to bring up my amendment, since we have a unanimous-consent agreement as to a time limit. I have been waiting around.

Mr. BENTSEN. I say to the Senator from Iowa that the managers would be delighted to have the Senator from Iowa immediately go following Senator MURKOWSKI'S amendment, which I do not anticipate will take much time.

Mr. HARKIN. There will be a 4 o'clock vote, so I will be interrupted by that.

Mr. PACKWOOD. Senator McCONNELL, Senator MURKOWSKI, and Senator HARKIN, and we will have a vote at 4 o'clock.

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

Mr. McCONNELL. I ask unanimous consent that the Senator from California [Mr. SEYMOUR] be added as a cosponsor to the amendment just agreed to.

Mr. McCONNELL. Mr. President, I move to reconsider the vote.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3168

(Purpose: Providing that professional fees incurred in a taxfree corporate reorganization not be treated as a separate amortizable intangible)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL] proposes an amendment numbered 3168.

Mr. McCONNELL. 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 1336, between lines 11 and 12, insert:

"(9) Any fees for professional services, and any transaction costs, incurred by parties to a reorganization with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

Mr. McCONNELL. Mr. President, the amendment I offer is an amendment which will, I hope, remove at least one artificial incentive for corporate mergers, buyouts, and takeovers.

Such massive corporate transactions can disrupt the entire fabric of a company, resulting in layoffs, forced retirements, massive debts, and managerial chaos.

Yet there are times when mergers and buyouts are vitally necessary to preserve the life of a business. Sometimes they are actually the only way to stave off bankruptcy or severe financial hemorrhaging.

For these reasons, many economists believe that the Government should allow the wisdom of the market to prevail in these matters, and that we should not try to actively encourage or discourage these corporate transactions through the artificial steroids of tax incentives.

Earlier this year, the Supreme Court adopted this point of view in the tax case of Indopco versus Commissioner. The Court ruled that legal fees incurred in a corporate takeover could not be amortized or deducted for Federal income tax purposes.

In doing so, the Court removed at least one powerful incentive for takeovers: the ability of Wall Street takeover artists to write off the fees paid to Wall Street law firms. This decision, reached by a rarely unanimous Supreme Court, could not have been clearer.

Nevertheless, the bill before us today touches so heavily on the subject of deductible expenses in corporate takeovers that some clever tax attorney might argue that the bill effectively supersedes the Court's decision in this matter.

Therefore, I believe it is appropriate—even necessary—to recognize and reinforce the Supreme Court's unequivocal ruling in Indopco within this legislative context.

The amendment I am offering seeks to codify the Court's decision which prohibits corporations from deducting legal and other professional expenses which are directly incurred in corporate buyouts and takeovers.

To put it more simply, my amendment ensures that in any corporate buyout decision, the interests of Main Street will count at least as much as the interests of Wall Street

At the same time, my amendment does not seek to restrict corporate transactions that are driven by sound economic objectives. Clearly, if a corporate acquisition is likely to produce a stronger, healthier business, then the inability to amortize related professional expenses should not be a deterrence to the transaction.

Instead, what my amendment seeks to do is prevent the expensive and market-distorting tax subsidies which go to Wall Street takeover specialists and the firms that hire them. My amendment simply says that the Tax Code should not be used to promote—or prohibit—buyouts and takeovers and the reams of legal documents that these transactions produce.

That was the decision of the Supreme Court in the Indopco case, which argued that legal fees incurred in a corporate acquisition could not be considered "ordinary and necessary and incurred in carrying out any trade or business," as defined in section 162 of the Tax Code.

In the same decision, the Court held that such fees do not "create or enhance a separate and distinct additional asset," and therefore do not qualify for amortization under section 263.

Legal fees, in the high-stakes world of hostile takeovers and leveraged buyouts, are astronomical. For example, in the Kolhberg, Kravis & Roberts

takeover of RJR Nabisco, the fees paid to Wall Street lawyers and other specialists were reported to be $1.2 billion.

Some experts estimate that lawyers on both sides of a corporate buyout take an average of 3 percent off the top of the total acquisition cost.

Between 1986 and 1991, approximately 90 billion dollars' worth of tax-free corporate acquisitions were performed each year. Using the 3-percent rule, Wall Street lawyers and other takeover professionals made about $2.5 billion for every single year in that half decade.

Without an amendment to codify the Supreme Court's ruling in Indopco, those billions of dollars in takeover fees could potentially be amortized over a 16-year period. According to the Joint Tax Committee, such a writeoff would cost the Federal Government—and indirectly the taxpayers—approximately $75 million over the next 5 years.

And that would only be the beginning.

Just think what kind of incentive we would be creating by allowing such a deduction: The more lawyers you have, the greater your tax deduction. This deduction would cost society in two ways: through the loss of tax revenue, and through the potential increase in litigation, spawned by this tax loophole.

Certainly, this is not the purpose of the underlying bill.

As I understand it, the urban aid bill is intended to revive economic growth and create jobs across the Nation. But, Mr. President, the tax amortization of takeover professional fees would create only one urban enterprise zone, perhaps the richest in the world, on the southern tip of Manhattan: Wall Street.

Now, I agree that we need to do everything we can to keep the economic recovery moving, and to help those who were hit hardest by the recent recession. Maybe we even need to help struggling Wall Street lawyers. Maybe the soles on their Gucci loafers are wearing thin.

Nevertheless, we should not try to help them by extending a special tax deduction that ultimately comes at the expense of the average taxpaying family.

Mr. President, I have often spoken of the lawyer's tax and its tremendous drag on the economy. The lawyers tax—which is the cumulative cost of litigation in our society—affects nearly every product, business, and consumer. American businesses are at a huge disadvantage in the world marketplace because of the added cost of litigation.

I have tried repeatedly to cut the lawyer's tax through legislation. My objective today, admittedly a more modest one, is to cut at least one lawyer's deduction.

Mr. President, it is my understanding that the managers have taken a look at this amendment and find it acceptable.

The PRESIDING OFFICER. Is there further debate?

The Senator from Texas.

Mr. BENTSEN. Mr. President, I am advised there are those who may be in opposition to the amendment who want to be heard, and with that in mind, 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. McCONNELL. 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. McCONNELL. Mr. President, it is my understanding a question was raised as to the effective date of this amendment. Were it to be adopted, it would apply prospectively—in other words, only to expenses that arise from future transactions—and not retroactively.

Mr. PACKWOOD. Mr. President, I thank the Senator from Kentucky. There was some question raised on that. That, I think, will alleviate that problem.

I think we can clear up one other question that would exist right now, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to the call the roll.

Mr. BENTSEN. 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. BENTSEN. Mr. President, as the Senator stated, you have the recent Supreme Court case ruling that professional fees incurred in the friendly takeovers must be capitalized and cannot be deducted. This amendment, as I understand it, will ensure that the amortization of intangible assets provision would not overrule that decision by allowing such expenses to be amortized over 16 years.

I think it is a sensible clarification. It certainly is not the intention of the legislation to alter the case law in that area.

With that in mind the manager of this side is prepared to accept the amendment.

Mr. PACKWOOD. We are prepared to accept the amendment.

The PRESIDING OFFICER. Hearing no further debate, the question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (No. 3168) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. 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.

AMENDMENT NO. 3169

(Purpose: To amend the Internal Revenue Code of 1986 to permit rollovers into individual retirement accounts of separation pay from the Armed Forces to the extent it does not exceed $25,000)

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I take this opportunity to propose and send to the desk for immediate consideration an amendment on behalf of myself and Senator STEVENS.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for himself and Mr. STEVENS, proposes an amendment numbered 3169.

Mr. MURKOWSKI. 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 end of title VIII of the Committee amendment, insert:

SEC. . IRA ROLLOVERS OF MILITARY SEPARATION PAY.

(a) IN GENERAL.—Section 402(c) (relating to rules applicable to rollovers) is amended by adding at the end the following new paragraph:

"(11) MILITARY SEPARATION PAY.—If—

"(A) an individual receives separation pay under section 1174 or 1174a of title 10, United States Code, and

"(B) such individual transfers any portion of such pay within 60 days after the receipt of such pay to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B),

then the portion of the pay so transferred (to the extent it does not exceed $25,000) shall be treated as a transfer from a qualified trust which meets the requirements of this subsection and which is a transfer of a distribution of amounts other than employee contributions."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to pay received after December 5, 1991.

(2) TRANSITION RULE.—In the case of any payment received after December 5, 1991, and before the date of the enactment of this Act, the 60-day transfer requirement of section 402(c)(11)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall be treated as met if the taxpayer transfers the payment to an eligible retirement plan within 1 year after such date of enactment.

Mr. MURKOWSKI. Mr. President, I rise to propose a very important amendment which I think deserves the bipartisan support of this body. It would help those men and women departing from the armed services under

the Special Separation Benefit Program.

This amendment is similar to a bill that I introduced in June, S. 2904, entitled the Military Separation Retirement Benefits Act.

Because of military downsizing, the Department of Defense is offering an incentive, the special separation benefit, to encourage our service men and women to voluntarily depart the armed services. For many, of course, that is very difficult, because they had presumed to have a career in the military.

Thus far, 55,000 men and women have applied to leave under the Separation Benefit Program. This benefit is designed to compensate America's military men and women for surrendering the security and satisfaction of serving their country in the Armed Forces.

Specifically, the separation benefit is based on rank at the time of departure and the number of years served. That is the formula.

An example of that would be, a staff sergeant with 16 years of service would receive some $50,466 in separation benefits. That same staff sergeant would earn in the service approximately $24,000 a year. Thus, the benefit amount is significantly higher than the ordinary pay the service person has been receiving.

Well, Mr. President, the problem those departing service people have is an obvious one. The entire separation benefit is taxed in the year received as ordinary income to the service person. As I noted earlier, the amount of the separation benefit far outstrips what the service person has been making or, in all likelihood, will be making in an outside position in the immediate future.

So taxing the entire separation benefit as ordinary income is hardly fair to those who have sacrificed so much already, and are now sacrificing a military career and retirement benefits for the uncertainty of today's economic times.

Mr. President, there is a solution. This amendment allows those receiving the separation benefit to roll over up to $25,000 of the separation benefit into an eligible retirement account, such as an IRA, in the year received.

For those who have already left the service and received the separation benefit, they could roll over that amount into an IRA within a year of adoption of this law. Finally, if, in the future, service people are forced to leave the service, they, too would receive the rollover right.

Thus, the amendment allows the departing service person to avoid what I consider an unfair and disproportionate tax, and to plan, through personal savings, for a more secure future outside the military.

Further, Mr. President, I suggest that there is a substantial inducement for savings by this amendment. This amendment would encourage departing service men and women to save for their futures by offering them an incentive to save, something all too lacking in our society.

Before I conclude, I would like to note that this amendment has received substantial support, as a matter of fact, great support from the service organizations. We have specifically 25 organizations representing over 6 million currently serving men and women and veterans who have endorsed this amendment.

I ask unanimous consent that the list of organizations be printed in the RECORD.

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

LIST OF SERVICE ORGANIZATIONS WHICH HAVE ENDORSED MURKOWSKI MILITARY IRA ROLLOVER AMENDMENT

1. Air Force Association.
2. Air Force Sergeants Association.
3. Association of Military Surgeons of the United States.
4. Association of the United States Army.
5. Commissioned Officers Association of the United States Public Health Service.
6. Chief Warrant and Warrant Officers Association of the United States Coast Guard.
7. Enlisted Association of the National Guard of the United States.
8. Fleet Reserve Association.
9. Jewish War Veterans of the United States of America.
10. Marine Corps League.
11. Marine Corps Reserve Officers Association.
12. Military Chaplains Association of the United States of America.
13. National Association for Uniformed Services.
14. National Guard Association of the United States.
15. National Military Family Association.
16. Naval Enlisted Reserve Association.
17. Naval Reserve Association.
18. Navy League of the United States.
19. Non Commissioned Officers Association.
20. Reserve Officers Association.
21. The Retired Enlisted Association.
22. The Retired Officers Association.
23. United States Army Warrant Officers Association.
24. United States Coast Guard Chief Petty Officers Association.

Finally, Mr. President, I think that there is good reason for the broad public support for this amendment to benefit those in our military. These men and women have made a substantial sacrifice for this country. This amendment attempts to treat them fairly by not unduly taxing them for heeding the Nation's call now that they leave the service.

And, I might add these men and women are leaving the service now. And they are asking for our help now. I think this amendment is a small contribution to the Tax Code that could accommodate them.

It is my understanding that this amendment has been discussed on both sides and cleared, but I would withhold that assertion pending the comments of the floor managers.

I want to particularly thank the staff on both sides who worked so hard to accommodate this effort, including Mr. Brindle of my personal staff.

I yield the floor.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, in looking at the amendment as offered by the Senator from Alaska, as I understand it, what he is seeking to do is when you have someone who is discharged and you have severance pay, some of these individuals could have 10, 12 years of service and if you are talking about the vesting provisions of military pensions, it is 20 years. So these people are precluded from that, in effect.

I think there is equity in what he is proposing because, as I understand it, he is talking about a rollover in an IRA with a cap on it of $25,000.

Mr. MURKOWSKI. That is correct.

Mr. BENTSEN. I like the concept. I think it is equity and fairness.

I would like to be added as a cosponsor.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senator from Texas be added as a cosponsor.

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

Mr. BENTSEN. I must also tell you that I know of no objection from this side.

Mr. PACKWOOD. And there is no objection from this side.

Mr. BENTSEN. We are prepared to accept the amendment.

Mr. MURKOWSKI. I thank the chairman and my colleague from Oregon.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Alaska [Mr. MURKOWSKI].

The amendment (No. 3169) was agreed.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President I ask unanimous consent to add myself as cosponsor of the Murkowski amendment.

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

Mr. MURKOWSKI. I thank my friend from Oregon.

Mr. PACKWOOD. I thank my friend from Alaska.

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

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

AMENDMENT NO. 3164

The PRESIDING OFFICER (Ms. MIKULSKI). Under the previous order, the question is on agreeing to the motion of the Senator from Arkansas [Mr. BUMPERS] to waive section 311 of the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DECONCINI (when his name was called). Present.

Mr. JOHNSTON (after having voted in the negative). On this vote I have a pair with the distinguished Senator from North Carolina [Mr. SANFORD]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BUMPERS. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Tennessee [Mr. GORE] are necessarily absent.

On this vote, the Senator from Louisiana [Mr. JOHNSTON] is paired with the Senator from North Carolina [Mr. SANFORD]. If present and voting, the Senator from North Carolina would vote "yea" and the Senator from Louisiana would vote "nay."

Mr. SIMPSON. I announce that the Senator from California [Mr. SEYMOUR] is necessarily absent.

The yeas and nays resulted—yeas 57, nays 37, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—57

Akaka	Glenn	Lugar
Biden	Gorton	Mack
Bingaman	Graham	McCain
Bond	Gramm	McConnell
Bradley	Grassley	Metzenbaum
Brown	Harkin	Nickles
Bryan	Hatch	Nunn
Bumpers	Helms	Reid
Burns	Hollings	Riegle
Coats	Kassebaum	Robb
Cohen	Kasten	Roth
Conrad	Kerrey	Sarbanes
Cranston	Kerry	Shelby
D'Amato	Kohl	Smith
Dixon	Lautenberg	Specter
Dodd	Leahy	Wallop
Exon	Levin	Warner
Ford	Lieberman	Wellstone
Fowler	Lott	Wofford

NAYS—37

Adams	Durenberger	Pressler
Baucus	Garn	Pryor
Bentsen	Hatfield	Rockefeller
Breaux	Heflin	Rudman
Burdick, Jocelyn	Inouye	Sasser
Byrd	Jeffords	Simon
Chafee	Kennedy	Simpson
Cochran	Mikulski	Stevens
Craig	Mitchell	Symms
Danforth	Moynihan	Thurmond
Daschle	Murkowski	Wirth
Dole	Packwood	
Domenici	Pell	

ANSWERED "PRESENT"—1

DeConcini

Present and giving a live pair, as previously recorded—1

Johnston, against

NOT VOTING—4

Boren	Sanford
Gore	Seymour

The PRESIDING OFFICER. On this motion to waive the Budget Act on the Bumpers amendment, the yeas are 57, the nays are 37, and 1 responding present.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The adoption and enactment into law of the pending Bumpers amendment would cause revenues to be less than the appropriate level of total revenues set forth in the concurrent resolution on the budget by $300 million for the period of fiscal years 1993 through 1997, in violation of section 311(a) of the Congressional Budget Act of 1974.

Therefore, the point of order is sustained and the amendment falls.

Mr. PACKWOOD. Madam President, is the order now that we go to the Harkin amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. PACKWOOD. I wonder if I might ask the Senator from Iowa, I believe the chairman and I have two unanimous consent requests for people to come after you, and we would like to get them if we could.

Mr. HARKIN. That is fine.

Mr. BENTSEN. Madam President, I ask unanimous consent that on the disposition of the Harkin amendment, that there be a time limitation for debate of 10 minutes on Senator WARNER's amendment equally divided in the usual form but no second-degree amendments, nor amendments to any language that may be stricken in order thereto.

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

Mr. BENTSEN. Madam President, I ask unanimous consent that upon the disposition of the Warner amendment that there be a time limitation for debate of 30 minutes on Senator MCCAIN's amendment, equally divided in the usual form, with no second-degree amendments or amendments to any language that may be stricken in order thereto.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3170

(Purpose: To amend the Internal Revenue Code of 1986 to limit deductions for advertising and promotional expenses for tobacco products, and to use the resulting revenues for advertising expenditures to persuade individuals not to use tobacco products)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 3170.

Mr. HARKIN. Madam 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:

On page 1811, strike line 9 and insert the following: of the enactment of this Act.

SEC. 8217. ADVERTISING AND PROMOTIONAL EXPENSES RELATING TO TOBACCO PRODUCT USE.

(a) LIMITATION ON DEDUCTION.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280I. LIMITATION ON DEDUCTION FOR TOBACCO ADVERTISING AND PROMOTIONAL EXPENSES.

"(a) IN GENERAL.—The amount allowable as a deduction under this chapter for expenses relating to advertising or promoting tobacco products shall not exceed 80 percent of the amount of such expenses which would (but for this paragraph) be allowable as a deduction under this chapter.

"(b) DEFINITIONS.—For purposes of this section—

"(1) TOBACCO PRODUCTS.—The term 'tobacco products' means cigars, cigarettes, smokeless tobacco, pipe tobacco, or any similar tobacco product.

"(2) CIGARETTES, CIGARS, SMOKELESS TOBACCO, PIPE TOBACCO.—The terms 'cigar', 'cigarette' 'smokeless tobacco', and 'pipe tobacco' have the same meanings given to such terms by subsections (a), (b), (n), and (o) of section 5702, respectively."

(2) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following new item:

"Sec. 280I. Limitation on deduction for tobacco advertising and promotion expenses."

(b) ESTABLISHMENT OF TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9512. TRUST FUND TO REDUCE TOBACCO USE.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Trust Fund to Reduce Tobacco Use' (hereafter referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—The Secretary shall transfer to the Trust Fund an amount equivalent to the net increase in

revenues received in the Treasury attributable to section 280I as added by subsection (a) of section ___ of the Revenue Act of 1992, as estimated by the Secretary.

"(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, to the Secretary to distribute to each State based upon such State's population in relation to the population of all the States, as determined by using the most recent decennial census data.

"(2) USE OF DISTRIBUTIONS.—Each State, through its agency responsible for public health, may use its distribution to fund advertising programs designed to persuade individuals (especially children, pregnant women, and minorities) not to use tobacco products (as defined in section 280I(b)).

"(3) LIMITATION ON ADMINISTRATIVE COSTS.—Each State may use not more than 3 percent of the amount described in paragraph (2) for administrative expenses."

(2) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:

"Sec. 9512. Trust Fund to Reduce Tobacco Use."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1992.

The PRESIDING OFFICER. Before the Senate begins debate, the Chair advises all Senators that the time for debate on the Harkin amendment is limited to 1 hour equally divided between the Senator from Iowa, the proponent of the amendment, Mr. HARKIN, and the Senator from Texas, Mr. BENTSEN.

The Senator from Iowa may proceed.

Mr. HARKIN. Madam President, I yield myself initially 5 minutes. If the Chair will advise when 5 minutes are up, I would appreciate that.

Madam President, this is a very simple and modest amendment. It places on tobacco advertising and promotion expenses the same modest limitation of tax deductibility that we imposed on business meals and entertainment in 1986.

It will also authorize—at the same level as the revenues generated by this change—funding to the States to support advertising designed to reduce the use of tobacco products by our children, pregnant women, and minorities—all targets of the tobacco industry's advertising campaign.

What this amendment does is say that all advertising for tobacco and tobacco products, you can only deduct 80 percent of that advertising as ordinary and necessary business expenses, the same as the limit we put on business meals in 1986. The revenue generated from that will be sent out to the States, to their local public health departments, to run advertising to reduce smoking, especially by minorities, by women, and by children. So, again, no advertising revenues will be lost. We will just have a different form of advertising.

Madam President, as I said earlier, the advertising targets kids in this country. That is what the tobacco advertising is all about.

I showed this picture of Old Joe Camel before, the camel, the guy here. He is a smooth character. You see he has lovely young women looking at him. He is a winner, of course. He has a trophy, fast cars in the winner's circle, and has all the crowd looking at him.

This all goes to kids. As a matter of fact, 91 percent of all the 6-year-olds in the country recognize Old Joe Camel, the same as they recognize Mickey Mouse.

And, Madam President, this advertising works. In 3 years the sales from Camel cigarettes to minors went from $6 million to $476 million. It works. The advertising is effective. Ninety percent of all smokers start smoking by the age of 20—25 percent by the age of 12; 25 percent by the age of 14; the rest by the age of 20. Ninety percent of all smoking begins before age 20. Advertising is geared to the young to get kids hooked on tobacco.

You know, Madam President, there is a code of ethics, or it is advertising standards, I have here, and I ask unanimous consent to print these advertising standards in the RECORD

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

TOBACCO INDUSTRY, CIGARETTE ADVERTISING CODE[1]

STATEMENT OF PURPOSES

The purposes of this Code are to establish uniform standards for cigarette advertising and to provide means whereby compliance with this Code can be ascertained promptly and fairly and on a consistent basis.

ARTICLE I.—DEFINITIONS

Section 1. "Advertising";

(a) Means all forms of advertising in, or primarily directed to, the United States, Puerto Rico, any territory or possession of the United States, or any military installation of the United States, including, but not limited to, radio, television and cinema commercials of all types, newspaper and magazine advertisements, billboards, posters and signs, subway and rail or bus car cards, automobile and truck decals, posters and signs, calendars, pamphlets, handbills, matchbook advertising, and point of sale display material of all types;

(b) Includes any written material or article or excerpt therefrom, not otherwise advertising, when used for promotional purposes;

(c) Includes labeling, namely, the display of written, printed, or graphic matter upon any portion of the package, carton, or other container in which cigarettes are packaged or shipped by the manufacturer; but

(d) Does not include the entertainment portion of any television or radio program.

Section 2. "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

Section 3. "Representation" means any statement, reference, or claim, express or implied, direct or indirect, whether in oral, written, printed or graphic form, or in any combination of such forms.

[1] Note:—Enforcement provisions eliminated in 1970.

ARTICLE II.—THE CODE ADMINISTRATOR

Section 1. There shall be a Code Administrator who shall be a person of recognized independence, integrity and intellectual achievement to the end that decision by him shall command public confidence and respect. The Administrator shall have all of the powers and authority necessary and proper to enable him to discharge effectively the responsibilities entrusted to him by this Code.

Section 2. The Administrator shall have complete and final authority to determine whether cigarette advertising complies with the standards of this Code and to enforce this Code in all other respects.

Section 3. The Administrator shall appoint a staff adequate and competent to assist him in discharging his duties.

Section 4. Neither the Administrator nor any member of his staff shall be an officer, director, employee or stockholder of any manufacturer of tobacco products, nor shall any such person have any financial interest in the business of any such manufacturer.

Section 5. The Administrator is authorized to convene scientific advisory panels to enable him to carry out his duties. Persons selected for such panels shall be of independence, integrity and competence in their particular areas of scientific discipline. In selecting such persons, the Administrator may consult with appropriate governmental and private agencies such as the U.S. Department of Health, Education and Welfare; National Academy of Sciences; National Research Council; American Medical Association; Scientific Advisory Board of The Council for Tobacco Research—U.S.A.; medical and scientific societies; colleges and universities; and non-profit research institutes.

Section 6. The Administrator shall by regulation establish procedures for the administration and enforcement of this Code including, without limitation procedure for:

(a) The submission to him of proposed cigarette advertising which, together with any supporting data or documents, shall be kept confidential, except as otherwise provided in ARTICLE IV, Section 4, of this Code or as agreed to by the submitting party;

(b) The submission of protests by parties subject to this Code concerning any determination by him;

(c) Hearings in connection with all submissions and protests; and

(d) Reconsideration by him of any of his determinations.

ARTICLE III.—ADVERTISING CLEARANCE

Section 1. No cigarette advertising shall be used unless such advertising shall first have been submitted to the Administrator and determined by him to be in compliance with the standards of this Code; provided that by regulation promulgated by the Administrator specified advertising may be excepted from the requirement of such submission but not from the requirement of compliance with the standards of this Code.

ARTICLE IV.—ADVERTISING STANDARDS

Section 1. All cigarette advertising and promotional activities shall be subject to the following:

(a) Cigarette advertising shall not appear

(i) On television and radio programs, or in publications, directed primarily to persons under twenty-one years of age;

(ii) In spot announcements during any program break in, or during the program break immediately preceding or following, a television or radio program directed primarily to persons under twenty-one years of age;

(iii) In school, college, or university media (including athletic, theatrical and other programs);

(iv) In comic books, or comic supplements to newspaper.

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts conducted on school, college, or university campuses, or in their facilities, or in fraternity or sorority houses.

(d) Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

(e) Natural persons depicted as smokers in cigarette advertising shall be at least twenty-five years of age and shall not be dressed or otherwise made to appear to be less than twenty-five years of age. Fictitious persons so depicted in the form of drawings, sketches or any other manner shall appear to be at least twenty-five years of age in dress and otherwise.

(f) Cigarette advertising may use attractive, healthy looking models, or illustrations or drawings of persons who appear to be attractive and healthy, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking.

(g) No cigarette advertising shall contain a picture or an illustration of a person smoking in an exaggerated manner.

(h) Cigarette advertising shall not depict as a smoker any person well known as being, or having been, an athlete.

(i) Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

(j) Testimonials from athletes or celebrities in the entertainment world, or testimonials from other persons who, in the judgment of the Administrator, would have special appeal to the persons under twenty-one years of age, shall not be used in cigarette advertising.

Section 2. No cigarette advertising which makes a representation with respect to health shall be used unless:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; and

(b) If the Administrator shall have determined it to be appropriate, a disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that the representation with respect to health in such advertising is not material.

Section 3. The inclusion in cigarette advertising of reference to the presence or absence of a filter, or the description or depiction of a filter, shall not be deemed a representation with respect to health unless the advertising including such reference, description or depiction, shall be determined by the Administrator to constitute, through omission or inclusion, a representation with respect to health. If the Administrator shall have determined that such advertising constitutes a representation with respect to health, the provisions of Section 2 of this Article shall apply.

Section 4. No cigarette advertising shall be used which refers to the removal or the reduction of any ingredient in the mainstream smoke of a cigarette, except that it shall be permissible to make a representation as to the quantity of an ingredient present in the mainstream smoke or as to the removal in toto of an ingredient from the mainstream smoke, or as to the absence of an ingredient normally present in the mainstream smoke, if:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; or

(b) A disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that a disclaimer is unnecessary for the reason that the representation in such advertising has no health implication or that such implication is not material; and

(d) The quantity of such ingredient is determined and expressed in accordance with uniform standards adopted by the Administrator for measuring the quantity of the ingredient present in the mainstream smoke, provided that, until such uniform standard is so adopted, the quantity of such ingredient may be determined and expressed in accordance with any recognized scientifically valid method disclosed to the Administrator without any requirement of confidential treatment.

Section 5. Any advertising determined by the Administrator to be in conformity with the Code may include the following legend: "This advertising (label) conforms to the standards of the Cigarette Advertising Code."

ARTICLE V.—PROCEDURES IN EVENT OF VIOLATION OF CODE

Section 1. Any person, firm or corporation subject to this Code, who violates any provision of this Code, shall, in the discretion of the Administrator with respect to each such violation, pay to the office of the Administrator as liquidated damages, and not as a penalty, a sum, not to exceed One Hundred Thousand Dollars ($100,000), as determined by the Administrator after consideration by him of all relevant facts. The Administrator shall establish regulations for the determination of such violation and for the assessment and payment of such damages. No sanction shall be imposed without affording a hearing to the alleged violator. Upon written request from the Administrator, an alleged violator of the Code shall promptly deliver to the Administrator any material and documents in its possession which are relevant and material to a determination by the Administrator as to whether the Code has been violated.

Section 2. Nothing herein contained shall be construed to give any person, firm or corporation, other than the Administrator, any cause of action.

Section 3. In the event of a violation of this Code, the Administrator in his discretion may make public the fact of such violation in such manner as he may deem appropriate.

Mr. HARKIN. Madam President, these are the standards set up by the tobacco industry itself, and it says that cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

Here is Old Joe Cool again, a smooth character, foolproof dating device, small move 325, they advise to get a date and the last one always breaks the ice by offering her a Camel.

How to approach someone on the beach. Here is this very athletic looking young man. He has a woman slung over his shoulder like a cave man and a couple women in the background scantily clad looking in kind of awe at this man. And, of course, it says, "Always have plenty of Camels when the beach party begins."

Here is a young woman lying on a beach blanket in a very suggestive sexual position. The best thing to do is offer her a Camel.

By their own standards, they say there should not be advertising like that for social prominence and success and yet they go ahead and do it.

Sample cigarettes, they say, should not be distributed to persons under 21 years of age. Here are coupons that you cut out and send in for a free pack of Camels. They do not know whether you are 21 or not. They have no way of knowing that.

Madam President, $4 billion is spent by the tobacco industry every year in advertising—$4 billion a year. We spend $114 million a year to try to stop people from smoking.

Obviously it is working. Every year there are 434,000 deaths by smoking in this country. More than were killed in all of World War II are killed every year by smoking-related deaths in this country. Look down here. Here is AIDS. Here are the murders. Here are the annual heroin-, morphine-, and cocaine-related deaths, which are barely shown on this chart. Here is tobacco over here—434,000 a year.

Madam President, this is a modest amendment, and we know that counteradvertising works. So taking the money from this and getting it out to the States to counteradvertise works.

In California, they had a very successful counteradvertising campaign. They had a 14.6 reduction in 2 years in smoking in California. We know it works.

So this is a modest, good-government amendment. It does three things. It saves money, because it saves lives, a lot of lives. It is $65 billion a year we spend on health care costs related to smoking, $65 billion a year not to mention the 434,000 deaths.

So it is going to save money and save lives. It does not take a dime away from advertising. They will just get a different form of advertising. It makes it the same as business meals. If we can say as an ordinary and necessary business expense you can only deduct 80 percent for business meals, for eating food, certainly we can say the same thing for advertising of cigarettes.

So it is a very modest amendment. I feel it is an amendment that does the right thing. It sends the signal to the tobacco industry that we are not going to put up with advertising like this any longer with taxpayer subsidies. I am not saying they cannot advertise. If they want to advertise, they can advertise. I am not after their free speech.

What I am saying is no longer should the taxpayers of this country use their tax dollars to subsidize this kind of advertising.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. I yield 7 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Madam President, I rise today in opposition to this amendment because I think it is unconstitutional.

The Senator's amendment, as I understand it, would partially disallow tax deductions for tobacco advertising and promotion expenses. In addition, the revenue raised from this disallowance would be used to fund antitobacco advertising. These provisions are clearly designed to restrict the commercial expression of the tobacco industry based on the content of the expression, while subsidizing the preferred speech of those who oppose the tobacco industry. This is a perfect example of content based discrimination.

In *Virginia State Board of Pharmacy* v. *Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the Supreme Court recognized commercial speech to be protected by the first amendment. Since that decision, the court has invalidated numerous restrictions on commercial speech. During its most recent term, the court confirmed its position that the Government should stay out of the business of deciding what is "good speech" and what is "bad speech."

In *R.A.V.* v. *City of St. Paul*, 60 USLW 4667, No. 90-7075, Slip Op. At 3 (June 22, 1992), the court said that a law is "facially unconstitutional if it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." Madam President there are those who will say, "I agree we should protect free speech, but this is tobacco advertising and the messages they send out are bad." This is the precise reason we have a first amendment. There is no need to protect the speech that is favored.

A four-prong test was established by the court in *Central Hudson Gas & Electric Co.* v. *PSC*, 447 U.S. 557 (1980), and remains the framework used by the court to determine the constitutionality of Government regulation that intefers with commercial speech. The test considers whether the commercial speech in question involves a lawful product not advertised in a false or deceptive way; the nature of the Government's regulatory interest; whether the governmental interest is accomplished directly; and if the restraint is narrowly tailored.

The proposed amendment would, in my opinion, fail such a test. The sale of tobacco is generally a lawful activity. The amendment is not aimed at possible false or misleading advertising concerning tobacco, and an attempt to use the Tax Code to limit the advertising possibilities for all tobacco products is not narrowly tailored legislation.

Some will argue that the Supreme Court opened the door for this type of regulation in *Posadas* v. *Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986). In Posadas, the Supreme Court upheld a statute which allowed the advertising of gambling only if it was directed at tourists, not residents of Puerto Rico. It must be noted that in this 5 to 4 decision the court did not seek to overturn the prior decisions on commercial speech, but on the contrary reaffirmed the principles of the Central Hudson and Virginia Pharmacy Board opinions.

Now, they narrowly directed and tailored the law in Puerto Rico. It was directed toward gambling. It was directed toward the residents of Puerto Rico and was not directed toward tourists. It was narrowly tailored. In this instance we have tobacco products generally.

I think they might have an argument—I think a weak argument, but they might have an argument—if this bill was tailored to prohibit the advertising of tobacco toward those that were under the age of 21 or some other classification pertaining to that, where the interest would be to stop smoking among young people. But this is a broad-sweeping bill in regards to all tobacco advertising.

There are those who will argue as well that this amendment is not truly restricting speech, but rather simply making tax policy. Such discriminatory taxation, although disguised, is a direct assault on the industry's first amendment rights. In *Speiser* v. *Randall*, 357 U.S. 513, 518 (1958), the court recognized that this type of disparate tax treatment may infringe first amendment rights. In its 1991 decision, *Simon & Schuster* v. *Members of the New York State Crime Victims Board*, 112 S.Ct. 501, 508, the court noted that when a government seeks to eliminate the tax deductibility of advertising of certain products, it seeks to impose "a financial burden on speakers because of the content of their speech."

If the Tax Code is used today to penalize companies that sell tobacco through a restriction on the information they can provide the public, then what industry will the Congress censor next session? I do not question the desire of the proponents of this amendment. In their opinion, they seek to help the health of their Nation. However, the area of regulating speech, through whatever means, is one in which we must walk very carefully. The right to free speech is one of the most cherished liberties the citizens of this Nation enjoy. Congress, in its efforts to protect its citizens, must not erode this freedom of expression.

Justice Hugo Black once said:

My view is without deviation, without any ifs, buts, or whereases, that freedom of speech means that you shall not do something to people either for the views they have, or the views they express, or the words they speak or write.

Let us not do, through the Tax Code, something to restrict the voice of this industry. We may disagree with the voice, but it is commercial speech and they are entitled to it until we get to the point that it is completely outlawed. It is not outlawed at this time and in my judgment, this amendment would be a violation of the Constitution.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I yield myself 2 minutes to respond to the distinguished Senator from Alabama.

Madam President, I have a copy of a CRS report for Congress, "The Constitutionality of Banning Cigarette Advertising," dated February 8, 1990.

I ask unanimous consent that the report be printed in the RECORD.

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

[CRS Report for Congress, Feb. 8, 1990]

THE CONSTITUTIONALITY OF BANNING CIGARETTE ADVERTISING

(By Henry Cohen, Legislative Attorney, American Law Division)

SUMMARY

This report considers the constitutionality of totally banning cigarette advertising. The Federal Cigarette Labeling and Advertising Act currently makes it "unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission. Although the Supreme Court has upheld the constitutionality of this banning of cigarette advertising on radio and television, a prohibition that included the print media could be treated differently. Nevertheless, it appears likely that a total prohibition would be found to be constitutional.

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." The Supreme Court has held that the First Amendment, notwithstanding this broad language, is not absolute. Some speech, such as obscenity, it does not protect at all. Other speech, such as commercial speech, it "accords a lesser protection to . . . than to other constitutionally guaranteed expression."

In *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York*, the Court set forth the test to be used to determine the constitutionality of governmental restrictions on commercial speech. For such a restriction to be constitutional, it must meet a four-prong test. This test asks initially (1) whether the commercial speech at issue is protected by the First Amendment (that is, whether it concerns a lawful activity and is not misleading) and (2) whether the asserted governmental interest in restricting it is substantial. "If both inquiries yield positive answers," then to be constitutional the restriction must (3) "directly advance[ ] the governmental interest as-

serted," and (4) be "not more extensive than is necessary to serve that interest."

Applying this test, as elaborated in more recent Supreme Court cases, to a total ban on cigarette advertising, this report concludes that such a ban would likely be upheld as constitutional.

This report considers the constitutionality of totally banning cigarette advertising.[1] The Federal Cigarette Labeling And Advertising Act[2] currently makes it "unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission."[3] Although the Supreme Court has upheld the constitutionality of this banning of cigarette advertising on radio and television,[4] a prohibition that included the print media could be treated differently. Nevertheless, it appears likely that a total prohibition would be found to be constitutional.

COMMERCIAL SPEECH

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."[5] The Supreme Court has held that the First Amendment, notwithstanding this broad language, is not absolute. Some speech, such as obscenity, it does not protect at all.[6] Other speech, such as commercial speech, it "accords a lesser protection to . . . than to other constitutionally guaranteed expression."[7]

In 1942, the Supreme Court held "that the Constitution impose no. . . restraint on government as respects purely commercial advertising."[8] However, in 1975, the Court granted First Amendment protection to an advertisement that "did more than simply propose a commercial transaction. It contained factual material of clear 'public interest.'"[9] The next year, the Court held that even speech that does "no more than propose a commercial transaction" is entitled to some First Amendment protection.[10] Subsequent cases have spelled out the degree of First Amendment protection to be accorded to commercial speech.

In Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,[11] the Court set forth the test to be used to determine the constitutionality of governmental restrictions on commercial speech. For such a restriction to be constitutional, it must meet a four-prong test. This test asks initially (1) whether the commercial speech at issue is protected by the First Amendment (that is, whether it concerns a lawful activity and is not misleading) and (2) whether the asserted governmental interest in restricting it is substantial. "If both inquiries yield positive answers," then to be constitutional the restriction must (3) "directly advance[ ] the governmental interest asserted," and (4) be "not more extensive than is necessary to serve that interest."[12]

In subsequent cases, the Supreme Court elaborated on the commercial speech doctrine set forth in Central Hudson. In Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico,[13] the Court upheld a Puerto Rico statute that, as interpreted by the Superior Court of Puerto Rico, prohibited the advertising of gambling parlors (which were legal) in Puerto Rico, unless the advertisements were addressed to tourists.[14] Applying the Central Hudson test, the Court first noted that the advertising at issue "concerns a lawful activity and is not misleading or fraudulent."[15] Applying the second prong of the test, the Court had "no difficulty in concluding that the Puerto Rico Legislature's interest in the health, safety, and welfare of its citizens constitutes a 'substantial' governmental interest."[16]

As for the third prong, the Court found reasonable the Puerto Rico legislature's view that restricting advertising would directly advance the governmental interest by reducing the demand for the product advertised. The Court also cited with approval a statement from an earlier case that the third prong of Central Hudson is satisfied where the legislative judgment is "not manifestly unreasonable."[17]

The Court then concluded: "We also think it clear beyond preadventure that the challenged statute and regulations satisfy the fourth and last step of the Central Hudson analysis, namely, whether the restrictions on commercial speech are no more extensive than necessary to serve the government's interest."[18]

Although the Court had said all that was necessary to uphold the statute under the Central Hudson test, it then added dicta that has become the most noted aspect of its opinion. The gambling casino that challenged the statute had argued that the restrictions on advertising for gambling were unconstitutional under two Supreme Court decisions that had struck down bans on advertisements for, respectively, contraceptives and abortion clinics.[19] The Court responded:

We think appellant's argument ignores a crucial distinction between the Carey and Bigelow decisions and the instant case. In Carey and Bigelow, the underlying conduct that was the subject of the advertising restrictions was constitutionally protected and could not have been prohibited by the State. Here, on the other hand, the Puerto Rico Legislature surely could have prohibited gambling by the residents of Puerto Rico altogether. In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling, and Carey and Bigelow are hence inapposite . . .

"It would surely be a strange constitutional doctrine which would concede to the legislature the authority to totally ban a product or activity, but to deny to the legislature the authority to forbid the stimulation of demand for the product or activity through advertising on behalf of those who would profit from such increased demand. Legislative regulation of products or activities deemed harmful, such as cigarettes, alcoholic beverages, and prostitution, has varied from outright prohibition on the one hand . . . to legalization of the product or activity with restrictions on stimulation of its demand on the other hand. . . . To rule out the latter, intermediate response would require more than we find in the First Amendment."[20]

Serious doubts may be raised as to the likelihood that this dictum will become law. It was expressed by the majority in a 5 to 4 opinion, with the four dissenters still on the Court but only three of the five members of the majority still on the Court.[21] Furthermore, this dictum seems inconsistent with prior Supreme Court decisions that have indicated that, under the Constitution, it is generally more permissible for a legislature to ban an activity than to ban speech. This is because, generally speaking, speech, and not activities, is protected by the First Amendment. One commentator has said:

"[A]ny suggestion that the power to prohibit an act must also carry with it the power to prohibit speech about it is clearly wrong. . . . [S]uch an argument stands our constitutional system on its head, by completely ignoring the value of free speech and autonomous choice in our society. Banning speech is much more dangerous than banning action. That's what the First Amendment is all about. When Virginia attempted to manipulate lawful consumer behavior by flatly banning advertisements for New York abortion clinics, the Supreme Court correctly ruled that Virginia lacked power to use censorship to manipulate lawful consumer choice. When New York attempted to manipulate lawful consumer behavior by flatly banning advertisements for electric heat, the Supreme Court correctly ruled that New York lacked the power to use information control to manipulate behavior."[22]

Even if one discounts the dicta in *Posadas*, it seems clear that the overall impact of the case was to make it easier for the government to regulate commercial advertising of legal products. The Court, as noted above, indicated that it would find the third prong of *Central Hudson* satisfied where the legislative judgment was "not manifestly unreasonable."[23] When the Court applied the fourth prong, holding that the advertising restriction was not more extensive than necessary, it left it "up to the legislature to decide" that "suppressing commercial speech that might encourage . . . gambling" would be more effective than "promulgating additional speech designed to *discourage* it."[24]

In *Board of Trustees of the State University of New York v. Fox*,[25] its most recent commercial speech decision, the Supreme Court made it still easier for the government to satisfy the fourth prong of the *Central Hudson* test. The State University of New York (SUNY) had promulgated regulations denying authorization "to private commercial enterprises to operate on State University campuses or in facilities furnished by the University," with exceptions for selling food, dry cleaning, and several other specific types of goods and services.[26] A company that did not come within any of these exceptions sought to hold a "Tupperware party" in a campus dormitory, and sued—together with students of the University—when it was prevented from doing so.

The Supreme Court quickly passed over the first three prongs of the *Central Hudson* test, finding no basis in them for striking down the SUNY regulations. The substantial governmental interests that the regulations sought to advance were "promoting an educational rather than commercial atmosphere on SUNY's campuses, promoting safety and security, preventing commercial exploitation of students, and preserving residential tranquility."[27]

As for the fourth prong—that a restriction on commercial speech not be more extensive than "necessary"—the Court held that it is not to be interpreted "strictly" to require the legislature to use the "least restrictive means" available to accomplish its purpose.[28] Instead, the Court held, legislation regulating commercial speech is to be upheld if there is a "'fit' between the legislature's ends and the means chosen to accomplish those ends,"—a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is "in proportion to the interest served"; that employs not necessarily the least restrictive means but, as we have put it in other contexts * * *, a means narrowly tailored to achieve the desired objective.[29]

The Court added that it rejected the contention that the test we have described is overly permissive. It is far different, of

FOOTNOTES AT END OF ARTICLE

course, from the "rational basis" test used for Fourteenth Amendment equal potection analysis. There it suffices if the law could be thought to further a legitimate governmental goal, without reference to whether it does so at inordinate cost. Here we require the government goal to be substantial, and the cost to be carefully calculated. * * * By declining to impose, in addition, a least-restrictive-means requirement, we take account of the difficulty of establishing with precision the point at which restrictions become more extensive than their objective requires, and provide the legislative and executive branches needed leeway in a field (commercial speech) "traditionally subject to governmental regulation." Far from eroding the essential protections of the First Amendment, we think this disposition strengthens them. "To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech."[30]

Thus, with respect to the fourth prong of the *Central Hudson* test, *Posadas* indicated that the government would be accorded significant deference in its determination that a restriction on commercial speech was not more extensive than necessary. *Fox* indicates that the word "necessary" is not to be taken literally, or, at least, in the Court's words, "is sometimes used more loosely" than a least-restrictive-means test would suggest.

RADIO AND TELEVISION ADVERTISING

The broadcast media traditionally has had less First Amendment protection than other media. In *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, the Supreme Court explained:

"Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."[31]

In *Red Lion*, the Supreme Court upheld the constitutionality of the Federal Communication Commission's "fairness doctrine," which required broadcast media licensees to provide coverage of controversial issues of interest to the community and to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues.

Communication over cable television, unlike communication over ordinary television, has been held to be entitled to full First Amendment protection; for example, pornography on cable apparently cannot be banned except to the limited extent that it can be banned in the print media.[32] In *Wilkinson* v. *Jones*,[33] the Supreme Court affirmed without a written opinion a case in which the district court, in the course of striking down the Utah Cable Television Programming Decency Act, noted several differences between cable and broadcasting. For one, "[i]n the cable medium, the physical scarcity that justifies content regulation in broadcasting is not present."[34] For another, as a subscriber medium, "cable TV is not an intruder but an invitee whose invitation can be carefully circumscribed."[35]

Arguably, the fact that the physical scarcity rationale is inapplicable to cable makes it inapplicable to broadcasting also. This is because a person who because of the scarcity of broadcasting channels cannot start a broadcasting channel can start a cable channel. In *Federal Communications Commission* v. *League of Women Voters of California*, the Supreme Court wrote:

"The prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years. Critics * * * charge that with the advent of cable and satellite television technology, communities now have access to such a wide variety of stations that the scarcity doctrine is obsolete. * * * We are not prepared, however, to reconsider our longstanding approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required."[36]

In 1987, the FCC abolished the "fairness doctrine" on First Amendment grounds, noting that technological developments and advancements in the telecommunications marketplace have provided a basis for the Supreme Court to reconsider its holding in *Red Lion Broadcasting*. The FCC's decision was upheld by a federal appeals court, and the Supreme Court declined to review the case.[37] The court of appeals did not rule on constitutional grounds, but rather concluded "that the FCC's decision that the fairness doctrine no longer served the public interest was neither arbitrary, capricious nor an abuse of discretion, and [we] are convinced that it would have acted on that finding to terminate the doctrine even in the absence of its belief that the doctrine was no longer constitutional."[38]

As noted above, the Supreme Court, without a written opinion, in 1972 upheld the statute that prohibits cigarette advertisements on the broadcast media.[39] The lower court had found that "there exists a rational basis for placing a ban on cigarette advertisements on broadcast facilities while allowing such advertisements in print. * * * Congress knew of the close relationship between cigarette commercial broadcast on the electronic media and their potential influence on young people. * * *"[40]

This decision was made before commercial speech gained constitutional protection, and before the scarcity rationale for according lesser First Amendment protection to broadcast media arguably began to lose its force. Nevertheless, it has not been overturned. Of course, if cigarette advertising may be banned in the print media, despite its being entitled to full First Amendment protection, then it may be banned in broadcast media, albeit not for the reasons that sufficed in 1972.

APPLICATION OF THE CENTRAL HUDSON TEST TO CIGARETTE ADVERTISEMENTS IN THE PRINT MEDIA

The *Central Hudson* test, to reiterate, asks initially (1) whether the commercial speech at issue is protected by the First Amendment (that is, whether it concerns a lawful activity and is not misleading) and (2) whether the asserted governmental interest in restricting it is substantial. "If both inquiries yield positive answers," then to be constitutional the restriction must (3) "directly advance[ ] the governmental interest asserted," and (4) be "not more extensive than is necessary to serve that interest."[41]

Applying the test to legislation that totally banned cigarette advertising, one would first assume that the sale of cigarettes whose advertising was banned was legal and was not misleading. (If it were otherwise, then advertising could be banned without regard to the *Central Hudson* test.) Next, one would ask whether the government had a substantial interest in the advertising prohibition. This question could be answered in the affirmative by citing the Supreme Court's finding in *Posadas* that the government's "interest in the health, safety, and welfare of its citizens constitutes a 'substantial' governmental interest."[42]

As for the third prong of the test—that the advertising prohibition must directly advance the governmental interest—as noted above, the Supreme Court in *Posadas* cited with approval a statement from an earlier case that it is satisfied where the legislative judgment is "not manifestly unreasonable."[43] In both *Central Hudson* and *Posadas*, the Court found it reasonable to believe that restricting advertising would reduce the demand for the product advertised in those cases.[44] There seems little chance that it would find differently in the case of cigarettes.

In addition, in *Posadas*, when the Court applied the third prong of the *Central Hudson*, it found that it did not matter "that the challenged advertising restrictions are under inclusive because other kinds of gambling such as horse racing, cockfighting, and the lottery may be advertised to residents of Puerto Rico. * * * [T]he legislature's interest * * * is not necessarily to reduce demand for all games of chance, but to reduce demand for casino gambling."[45] Therefore, it appears that if cigarette advertisements were banned, cigarette companies could not successfully argue that Congress had not banned advertisements for other dangerous products.

Finally, the fourth prong of the test—that the prohibition not be more extensive than necessary to serve the government's interest—would also seem unlikely to present a problem for the statute. Prior to *Fox*, a cigarette company challenging the prohibition might have succeeded—although it is by no means certain—by arguing that alternatives to a total ban, such as stronger health warnings or more anti-smoking advertisements, would be as effective in advancing the government's interest. After *Fox*, it seems very unlikely that a cigarette company could successfully argue that an advertising prohibition did not represent a reasonable "'fit' between the legislature's ends and the means chosen to accomplish those ends."[46]

In conclusion, it seems likely that a total ban on cigarette advertising would be upheld by the Supreme Court as constitutional.

HENRY COHEN,
Legislative Attorney, American Law Division, February 8, 1990.

FOOTNOTES

[1] The report does not discuss specific legislative proposals. For information on pending bills, see "Cigarette Advertising Bans and Other Tobacco-Related Proposals," by Bruce Mulock (CRS Issue Brief 86105, continually updated).

[2] 15 U.S.C. §§1331-1341.

[3] 15 U.S.C. §1335. This statute also requires specified warning labels on all cigarette packages distributed in the United States and on all cigarette advertisements within the United States. The warnings must be rotated quarterly in accordance with Federal Trade Commission regulations. 15 U.S.C. §1333.

[4] Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582 (D.D.C. 1971), *aff'd without opinion*, 405 U.S. 1000 (1972).

[5] This restriction also applies to state and local governments. Gitlow v. New York, 268 U.S. 652 (1925).

[6] Miller v. California, 413 U.S. 15 (1973).

[7] Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 563 (1980).

[8] Valentine v. Chrestensen, 316 U.S. 52, 54 (1942).

[9] Bigelow v. Virginia, 421 U.S. 809, 822 (1975).

[10] Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 762 (1976).

[11] Note 7, *supra*.

[12] *Id.* at 566.

[13] 478 U.S. 328 (1986).

[14] The statute on its face banned all advertising of gambling parlors in Puerto Rico but, in order to attract tourists, authorized it outside Puerto Rico. The Superior Court, in order to avoid declaring the statute unconstitutional, construed it to "allow, within the jurisdiction of Puerto Rico, advertising

by the casinos addressed to tourists, provided they do not invite the residents of Puerto Rico to visit the casino, even though said announcements may incidentally reach the hands of a resident." *Id.* at 335.

[15] Id. at 340-341.

[16] Id. at 341.

[17] Id. at 342, citing Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981).

[18] Id. at 343.

[19] Carey v. Population Services International, 431 U.S. 678 (1977); Bigelow v. Virginia, 421 U.S. 809 (1975).

[20] 478 U.S. at 345-347.

[21] Justices Scalia and Kennedy have replaced Chief Justice Burger and Justice Powell. The four dissenters in Posadas, however, did not specifically dispute the majority's dicta. Rather, Justice Stevens, in an opinion joined by two of the other dissenters, wrote: "Whether a State may ban all advertising of an activity that it permits but could prohibit—such as gambling, prostitution, or the consumption of liquor—is an elegant question of constitutional law. It is not, however, appropriate to address that question in this case. . . ." Id. at 359.

[22] Testimony of Burt Neuborne, professor of law at the New York University, before the House Comm. on Energy and Commerce, Subcom. on Transportation, Tourism, and Hazardous Materials (April 3, 1987) at 84. The Supreme Court cases to which he alludes are, respectively, Bigelow v. Virginia, *supra*, and Central Hudson, *supra*.

[23] Note 17, *supra*.

[24] Id. at 344 (emphasis supplied by the Court).

[25] 109 S.Ct. 3028 (1989).

[26] Id. at 3030.

[27] Id. at 3032.

[28] Id.

[29] Id. at 3035 (citations omitted).

[30] Id. (citations omitted). (One might respond to the last point that it could justify any restriction at all on commercial speech.)

[31] 395 U.S. 367, 388 (1969).

[32] The First Amendment permits pornography to be banned in the print media only if it is "obscene," as defined in Miller v. California, 413 U.S. 15, 24 (1973).

[33] 611 F. Supp. 1099 (D. Utah 1985), *aff'd*, 800 F.2d 989 (10th Cir. 1986), *aff'd*, 107 S.Ct. 1559 (1987).

[34] 611 F. Supp. at 1112.

[35] Id. at 1113.

[36] 468 U.S. 364, 376 n.11 (1984).

[37] Syracuse Peace Council v. Federal Communications Commission, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 58 U.S.L.W. 3424 (U.S. Jan. 8, 1990).

[38] Id. at 669.

[39] Note 4, *supra*.

[40] 333 F. Supp. at 585-586.

[41] Note 12, *supra*.

[42] 478 U.S. at 341.

[43] Note 17, *supra*.

[44] 447 U.S. at 568; 478 U.S. at 342.

[45] 478 U.S. at 342.

[46] Note 29, *supra*.

Mr. HARKIN. Madam President, in their summary they point out that in Central Hudson Gas & Electric Corp. versus Public Service Commission of New York, the court set forth certain tests. And CRS said:

Apply this test, as elaborated in more recent Supreme Court cases, to a total ban on cigarette advertising, this report concludes that such a ban would likely be upheld as constitutional.

Then, I have a Congressional Research Service report dated August 6, 1992. It says: "This memorandum is furnished in response to your inquiry," meaning my inquiry regarding cigarette advertising. They say that in an earlier report, they:

* * * concluded that a total ban on cigarette advertising would likely be upheld by the Supreme Court as constitutional. This of course would include a regulation less than a total ban, such as the currently required warning labels or a limitation on the tax deductibility as a business expense of the cost of cigarette advertising.

This conclusion was reached by applying the test prescribed by the Supreme Court for determining the constitutionality of a governmental regulation of commercial speech. Commercial speech is entitled to less protection under the First Amendment than most other forms of speech, and therefore the test for determining the constitutionality of a regulation of its is more lenient.

No Supreme Court case decided since the date of the above CRS report provides any reason to alter our conclusion.

I ask unanimous consent that a copy of that memorandum be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, August 6, 1992.

To: Hon. Tom Harkin. Attention: Phil Buchan.

From: American Law Division.

Subject: Constitutionality of Banning Cigarette Advertising.

This memorandum is furnished in response to your inquiry on the above subject. Our report, "The Constitutionality of Banning Cigarette Advertising" (CRS Report No. 90-82 A, Feb. 8, 1990), concluded that a total ban on cigarette advertising would likely be upheld by the Supreme Court as constitutional. This of course would include a regulation less than a total ban, such as the currently required warning labels or a limitation on the tax deductibility as a business expense of the cost of cigarette advertising.

This conclusion was reached by applying the test prescribed by the Supreme Court for determining the constitutionality of a governmental regulation of commercial speech.[1] Commercial speech is entitled to less protection under the First Amendment than most other forms of speech, and therefore the test for determining the constitutionality of a regulation of it is more lenient.

No Supreme Court case decided since the date of the above CRS report provides any reason to alter our conclusion. The "Son of Sam" case, for example, would have no relevance to the question of cigarette advertising because it did not involve commercial speech.[2] This case struck down a law that required that the profits of a criminal's writings about his crimes be held in escrow for the victims of his crimes. This type of writing is not commercial speech, because commercial speech is speech that "propose[s] a commercial transaction."[3] That books and films are published and sold for profit does not make them commercial speech; *i.e.*, it does not "prevent them from being a form of expression whose liberty is safeguarded [to the maximum extent] by the First Amendment."[4]

Likewise, the recent cross burning case would have no relevance because it did not involve commercial speech.[5] This case held that, although the government may proscribe fighting words, it may not make the further content discrimination of proscribing fighting words on the basis of hostility towards the underlying message expressed.

HENRY COHEN,
Legislative Attorney.

[1] Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980), and subsequent cases.

[2] Simon & Shuster v. New York State Crime Victims Board, 116 L.Ed.2d 476 (1991).

[3] Board of Trustees of the State University of New York v. Fox, 492 U.S. 469, (1989).

[4] Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501-502 (1952).

[5] R.A.V. v. City of St. Paul, No. 90-7675 (U.S. Sup. Ct. June 22, 1992).

Last, Madam President, I have a letter dated September 18, 1992, from Laurence Tribe, Ralph S. Tyler, professor of constitutional law, Harvard University, perhaps one of the foremost, if not the foremost, constitutional authority in America. He said:

Whatever I might personally think about the wisdom of this proposed amendment, or about its consistency with the First Amendment as I personally might construe it, it is my judgment as a constitutional scholar and as a student of the Supreme Court's First Amendment jurisprudence that the Court would almost certainly uphold the proposed amendment. Indeed, the standards used by the Supreme Court over the past twelve years to evaluate regulation and/or taxation of commercial speech leave little or no doubt that the Court would uphold the constitutionality even of a total ban on cigarette advertising.

It is true that there have been a number of more recent cases, most notably *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), in which the Court has shown strong opposition to content-based regulation of speech, including entirely unprotected speech. But the proposed tax measure would bear no meaningful constitutional resemblance to cases of this sort. My conclusion is that, unless commercial speech were to be given considerably more First Amendment protection than it receives under current Supreme Court doctrine, the proposed amendment would pass constitutional muster.

Madam President, I ask unanimous consent the letter from Laurence Tribe be printed in the RECORD.

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

HARVARD UNIVERSITY
LAW SCHOOL,
Cambridge, MA, September 18, 1992.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: I have analyzed your proposed amendment to H.R. 11, the Revenue Act of 1992, which would reduce the tax deductibility of cigarette and other tobacco product advertising and promotion from 100 percent to 80 percent and would use the funds generated from this change to support advertising designed to reduce the incidents of tobacco use, with a special emphasis on reducing use by children, pregnant women and minorities.

Whatever I might personally think about the wisdom of this proposed amendment, or about its consistency with the First Amendment as I personally might construe it, it is my judgment as a constitutional scholar and as a student of the Supreme Court's First Amendment jurisprudence that the Court would almost certainly uphold the proposed amendment. Indeed, the standards used by the Supreme Court over the past twelve years to evaluate regulation and/or taxation of commercial speech leave little or no doubt that the Court would uphold the constitutionality even of a total ban on cigarette advertising. See, e.g., *Posadas de Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 346 (1986).

It is true that there have been a number of more recent cases, most notably *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), in which the Court has shown strong opposition to content-based regulation of speech, including entirely unprotected speech. But the proposed tax measure would bear no meaningful

constitutional resemblance to cases of this sort. My conclusion is that, unless commercial speech were to be given considerably more First Amendment protection than it receives under current Supreme Court doctrine, the proposed amendment would pass constitutional muster.

Sincerely,

LAURENCE H. TRIBE.

Mr. HEFLIN. May I have 30 more seconds?

Mr. BENTSEN. I yield to the Senator from Alabama.

Mr. HEFLIN. Madam President, they quoted a letter from Laurence Tribe, pertaining to his prediction of constitutionality. I would simply like to point out that Laurence Tribe was wrong in his prediction on the question of the constitutionality of flag burning. In addition, since the Posadas case, which was a 5-4 decision, there have been two members of the court who have stepped down.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I yield 7 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. (Mr. DASCHLE). The Senator from Kentucky is recognized for 7 minutes.

Mr. MCCONNELL. Mr. President, I rise in opposition to this amendment which seeks to limit the deductibility of the costs of advertising tobacco products. This is not the first time that Congress has considered similar restrictions on the deductibility of tobacco advertising. Those proposals have not been adopted and, similarly, this amendment should be rejected. It reflects unwise tax policy and impermissibly restricts our freedom of speech.

I have no doubts or illusions about what the proponents of this amendment are trying to accomplish here. Their hope is that limiting the deductibility of advertising expenses will curtail the advertisement of tobacco and eventually lead to that product's demise. Can we rationalize social engineering because of the product, while we ignore the real impact this amendment will have on the American people? What does this say to American consumers?

To me, it clearly says, "we want you to have less information." That is what advertising is—consumer information. Our first amendment guarantees a free market for ideas and knowledge, and I can discern no credible argument for withholding knowledge from consumers.

The Harkin-Bradley amendment goes against the core principles of our country. Americans do not and will not tolerate information rationing and restrictions by our government. The attempt to change and control our behavior by manipulating information and ideas is reminiscent of the Communist rule which many nations are abandoning.

You will hear arguments that tobacco product advertisements are misleading and I would agree. Most advertising is misleading and it is so by design. No one would advertise their product by saying that it is just an average hamburger. We use typical ground beef, run-of-the-mill tomatoes, and week-old buns. And we use the most average looking family in our ads to emphasize our slow, rude, and inconsistent service.

The brand of deodorant you use does not make you more confident and secure.

The breath mint you use does not assure attraction by the opposite sex.

And I have yet to meet anybody who has spent time with the Swedish bikini team because of the beer they drink.

Are we such slaves to the power of advertising?

Anti-smoking activists have placed an almost magical importance on advertising's effectiveness. They argue that cigarette companies advertise to recruit new consumers. However, the consumption of tobacco products has declined at a rate of 2 to 3 percent annually for more than a decade.

In marketing terms, tobacco is a mature product and advertising to increase total consumption is ineffective.

Marketing of the product focuses more on increasing brand loyalty and taking customers away from competitors. An October 1991, Wall Street Journal article reports that 71 percent of people who smoke are brand loyal. This means that 29 percent frequently switch their brand. All companies use advertising not only to get people to switch brands, but to make sure their present customers do not desert them and switch to other brands.

There is no empirical evidence from available studies which proves that advertising creates the desire to initiate smoking and maintain smoking habits. The facts are, people form their attitudes about smoking at an early age and it is well accepted that parents, other family members, and peers are the overriding factor in shaping an individual's attitude about tobacco products. The problem is not that children need to be told about smoking, but that parents and family members need to take responsibility and lead by example, something that advertising has no effect on at all.

Recently, the Quebec superior court struck down Canada's tobacco advertising ban, because they found evidence supporting the purported link between tobacco advertising bans and consumption to be "deficient, if not nonexistent." Once again, it is clear that the product is being attacked, not advertising.

It is no secret that I am a strong supporter of our Nation's tobacco farmers. My home State of Kentucky has a proud, 300-year heritage built on tobacco. Kentucky has nearly 150,000 farms which hold allotments to grow tobacco and we have 60,000 farmers who depend on the production of tobacco for all or part of their income. The crop contributes more than $5 billion to my State's economy and $40 billion nationwide.

This amendment is one more attempt in the effort to put tobacco farmers out of business. However, this specific amendment does more than threaten our tobacco farmers. It threatens the very principles our Nation was founded on: freedom of speech.

The amendment before us would do violence to the first amendment principles which the Supreme Court has long recognized in the case of advertising. This type of content-based regulation of speech, proposed here in the amendment before us, is something Congress should not endorse.

This amendment unabashedly targets a particular commercial product and subjects that product to unfavorable tax treatment. In the case of Speiser versus Randall the Supreme Court ruled that "speech can be effectively limited by the exercise of the taxing power." The reduction of the tax deduction would have the effect of "limiting the circulation of information to which the public is entitled," or put more simply, suppressing disfavored speech.

Today's proposal targets tobacco, but what's next? Perhaps next time we'll be considering limiting the tax deductibility of advertising expenses of fast foods, because some deem it bad policy to advertise foods high in fat content. What about gasoline? Will some suggest that we should limit the deductibility of gasoline advertising expenses in order to promote public transit?

The proponents are not even reserved about the underlying effects of their amendment. It is clear that the amendment is intended to stifle free speech, and restrict the free flow of information. The course upon which this amendment would set us is a dangerous and unchartered one, and I believe we must resist undertaking it.

Efforts to reduce the advertising of tobacco products will not solve the tobacco and related health issues. Limitations will merely change marketing strategies of legal products to qualified, informed consumers.

Extensive surveys indicate there is already an extremely high awareness of, and belief in, the reported health consequences of smoking. A 1985 Audits and Surveys Inc. study reported that 99 percent of individuals contacted "had heard that cigarette smoking is dangerous." There is absolutely no evidence to support the claim that there is a lack of information on smoking and health.

This amendment would take the net revenue generated, if any, and distribute it to every State. While the language of this amendment does not specifically spell out how these tax credits will be provided to the States, the

"Dear Colleague" letter which was sent, suggests funding 50 separate statewide antismoking campaigns. This means that States have the discretion to use the Federal Income Tax Code to distribute tax credits as they see fit. There does not appear to be any Federal criteria or uniformity in how this amendment would actually be carried out.

This amendment is an attempt to use the Tax Code as an instrument of social policy. This proposal constitutes an ill-advised attempt by Government to influence consumer choice by restricting the flow of truthful information about lawful products, through manipulation of the Tax Code, thus obstructing the intelligent exercise of consumer choice.

The desire to place content-based limits on speech is a most dangerous step to make for a nation which takes pride in its freedom.

Mr. President, I must respectfully disagree with the authors of this amendment who suggest this is a very modest proposal. This is a very serious threat to the first amendment of the Constitution. The amendment turns over Federal tax revenues to every State for their distribution. The amendment would reduce advertising revenues by millions of dollars resulting in lost jobs, and would have a ripple effect on the $40 billion which the tobacco industry contributes to the gross national product of this country. There are many problems which lurk in this proposal, and I strongly urge my colleagues to vote against the amendment.

I ask unanimous consent a number of letters and articles be printed in the RECORD.

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

THE MEDIA COALITION, INC.,
New York, NY, September 16, 1992.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: The members of The Media Coalition, who represent most of this country's book and magazine publishers, booksellers, magazine wholesalers and distributors, recording companies and video and recording retailers, have asked me to express their opposition to efforts to limit the deductibility of advertising. It is reported that you and Senator Harkin may seek such limits through amendments to H.R. 11. If enacted, these restrictions would establish a precedent that could be used to inhibit the distribution of a wide variety of books, magazines, recordings and motion pictures that are protected by the First Amendment.

It is reported that you may seek to limit the deductibility of advertising for books, magazines, recordings and movies with sexual content. Senator Harkin has reportedly proposed to raise money for anti-tobacco advertisements by decreasing the tax deductibility of tobacco promotions by 20 per cent. Both proposals would increase the cost of advertising the specified products. In the case of your reported amendment, the "products" are literary works and other materials that are constitutionally protected.

Limiting the deductibility of advertising would open a Pandora's Box. The United States contains a multitude of groups whose values are in conflict. It is one of the strengths of our system that these conflicts are reflected in our books, magazines, recording and movies: the purpose of the First Amendment is to provide an atmosphere of freedom in which conflicting ideas may be debated. If the Congress begins to limit the deductibility of advertising, groups will lobby in an effort to penalize the producers and distributors of products they dislike, including books and other works dealing with controversial subjects. Our conflicts would be resolved not through the clash of opinions but by the struggle to control a majority in Congress. The right of free speech would be seriously undermined.

Please reconsider the idea of decreasing the deductibility of advertising.

Sincerely yours,

CHRISTOPHER FINAN,
Executive Director.

MAGAZINE PUBLISHERS OF AMERICA,
Washington, DC, August 10, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: The Magazine Publishers of America, the principal association representing the consumer magazine industry, strongly urges you to oppose the Harkin amendment on tobacco advertising.

This amendment—which would reduce from 100 to 80% the allowable deduction for advertising costs for tobacco products as an ordinary business expense—is totally inconsistent with the doctrine of commercial speech carefully developed over the past two decades by the U.S. Supreme Court. Under that doctrine, commercial speech may be restricted only if the governmental stricture is narrowly tailored to achieve a legitimate and substantial public interest. Clearly, to reduce a generally available deduction for ordinary business expenses for the advertising of a lawful product cannot be viewed as narrowly tailored in any sense.

The precedent that such an amendment—which, in the view of the U.S. Supreme Court, would impose "a financial burden on speakers because of the content of their speech"—would set for other lawful products that others might view as harmful would be extremely unwise and imprudent. The decline in tobacco use over the past two decades demonstrates convincingly that the most effective course of action is to encourage more information, not less.

We urge you to oppose the Harkin amendment.

Sincerely,

GEORGE GROSS.

ASSOCIATION OF
NATIONAL ADVERTISERS, INC.,
Washington, DC, September 14, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: Enclosed is a letter from the eminent legal expert, Professor Burt Neuborne of New York University's School of Law, which systematically analyzes Senator Harkin's amendment to H.R. 11. The Harkin amendment limits the tax deductibility of tobacco advertising. Professor Neuborne concludes that the amendment is unconstitutional and that the underlying premises of the amendment are "inconsistent with generally accepted principles of tax policy."

Our Association, which represents national advertisers who collectively account for over 80 percent of all annual regional and national advertising expenditures in this country, believe the Harkin amendment would create severely damaging precedents threatening all of our Members. We therefore hope that you will carefully consider the important points contained in the enclosed letter before casting your vote on this critical matter. We strongly urge that you defeat this ill-considered proposal.

Sincerely,

DANIEL L. JAFFE.

NEW YORK UNIVERSITY,
New York, NY, September 14, 1992.

Mr. DEWITT F. HELM, Jr.,
President, Association of National Advertisers, Inc., New York, NY.

DEAR DEWITT: You have asked my opinion of the legal merits of a proposed amendment to the Internal Revenue Code limiting the tax deductibility of advertising and promotion expenses for tobacco products and a linked provision establishing a tax credit for so-called "stop smoking promotion expenditures". As you know, I am a Professor of Law at New York University and served as National Legal Director of the American Civil Liberties Union from 1982-1986. Much of my career as an academic and a public interest lawyer has been spent in defending the First Amendment against well-intentioned efforts by the government to censor or manipulate protected speech.

In addition to the tax policy flaws of the proposed bill discussed below, I believe that the bill is an unconstitutional attempt to tax speech differentially on the basis of content. Under the bill, "bad speech", consisting of lawful advertisements for tobacco products is penalized, while "good speech", consisting of anti-smoking messages is favored. One can hardly imagine a clearer case of content-based discrimination.

Twice in the past Term, the Supreme Court reminded us that the First Amendment takes the government out of the business of discriminating between "bad speech" and "good speech". In *R.A.V.* v. *City of St. Paul*, 60 USLW 4667 (June 22, 1992), the Court struck down a law banning hate speech because it singled out certain offensive utterances for negative treatment because of its content. Similarly, in *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board*, 112 S.Ct. 501 (1991), the Court struck down a law that treated book royalties earned by a convicted criminal worse than other types of property owned by the criminal. In both cases, the Court noted that government was attempting to treat speech differentially on the basis of content. In both cases, a well-intentioned legislative program was invalidated.

The Supreme Court's aversion to content based regulation of speech is nothing new. In case after case, the Court has invalidated efforts to impose differential tax consequences on speech on the basis of content. In *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983), for example, the Court invalidated an attempt to impose differential tax rules on large and small newspapers, holding that the tax differential permitted government to use the tax law to benefit "good speech" and to penalize "bad speech". Similarly, in *Arkansas Writers Project, Inc.* v. *Ragland*,, 481 U.S. 221 (1987), the Court struck down efforts to exempt certain magazines from taxes based on

content. The Court stressed that the First Amendment forbids government from manipulating tax liability to benefit speech that it likes and penalize speech that it dislikes. See also *Grosjean* v. *American Press Co.*, 297 U.S. 333 (1936) (invalidating differential tax rates on newspapers).

Indeed, in *Leathers* v. *Medlock*, 111 S.Ct. 1438 (1991), the only Supreme Court case to uphold differential taxes on categories of speakers (cable operators and print media), the Court stressed that there was no possibility of manipulating tax liability on the basis of content, since each category of speaker carried essentially the same content. Justice O'Connor, writing for the Court in *Leathers*, summed up the law succinctly:

Regan v. *Taxation with Representation* stands for the proposition that a tax scheme that discriminates among speakers does not implicate the First Amendment unless it discriminates on the basis of ideas. [O]n the record in *Regan*, there appeared [no] 'hostile or oppressive discrimination'. We explained that the case would be different if Congress were to discriminate invidiously in its subsidies in such a way as to aim at the suppression of dangerous ideas.

Unfortunately, the proposed bill is an example of precisely the conduct that Justice O'Connor condemned. It is an open effort to manipulate tax liability in an effort to discourage lawful speech with which the bill's sponsors disagree. Accordingly, I believe that it is unconstitutional.

The bill's constitutional flaws are magnified by the obvious link between the denial of deductions for tobacco advertisements and the grant of credits for anti-smoking speech. The bill is designed to be revenue neutral, with increased tax receipts from the tobacco companies to be offset by decreased tax payments by favored speakers. In effect, the bill uses the tax law to shift funds from tobacco companies to opponents in order to finance anti-smoking messages. As such, it is an unlawful attempt to force tobacco companies to fund speech with which they disagree. But the First Amendment forbids the government from forcing a speaker to use his property to subsidize speech with which he disagrees. E.g. *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n*, 475 U.S. (1986); *Wooley* v. *Maynard*, 430 U.S. 705 (1977); *Elrod* v. *Burns*, 427 U.S. 347 (1976); *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209 (1977); *Miami Herald Pub. Co.* v, *Tornillo*, 418 U.S. (1974).

In addition to its First Amendment flaws, I believe that the proposed legislation, while undoubtedly well-motivated, is an unwise effort to use the Internal Revenue Code as a means of regulating private behavior. At a time when the economy is in an extremely fragile state and the deficit is at crisis levels, it seems wrong to tinker with the tax code in an effort to regulate behavior. Especially in times of economic difficulty, national tax policy should be forged by revenue needs and economic analysis and not by a desire to influence private behavior. If, for example, Congress attempted to regulate abortion by denying doctors deductions for business expenses, I believe that the bill's sponsors would immediately agree that tax law is not the way to approach the problem. It is, I believe, equally wrong to attempt to regulate smoking by manipulating the income tax laws.

Moreover, the legislation appears to rest on an unsound tax premise. The bill's sponsors argue that it merely removes a subsidy from tobacco advertising. The legislation appears to assume that the federal government is morally entitled to tax any and all of the property of its citizens and that decisions not to tax something, either through the vehicle of a tax deduction, a tax credit or a tax exemption, are acts of discretionary legislative grace that are the equivalent of government subsidies. With respect, such a "statist" view of the tax system is inconsistent with its basic premises. Americans start, not with an assumption that everything potentially belongs to the tax collector (with decisions not to tax treated like discretionary subsidies), but with the opposite assumption that government must justify its decision to tax. A basic tenet of the tax system is that income taxes are to be imposed on net income, after expenses of production have been deducted. When government recognizes the deductibility of the expenses of producing income, it does not do the taxpayer a discretionary favor. Rather, exempting the costs of production from a tax on income merely respects the fact an income tax cannot be legitimately imposed on anything other than net economic gain. Thus, allowing taxpayers to deduct advertising expenses in calculating taxable income is not an act of legislative grace. It is an obligation inherent in our conception of limited government and equitable income taxation.

An income tax deduction, like the deduction for advertising, that merely reflects the true cost of producing taxable income is not the equivalent of a government subsidy. Unlike a true subsidy, the government never acquired a right to the property that it purports to be giving back to the taxpayer. If every tax deduction were equated with a subsidy regardless of its economic justification, the entire tax code would be plunged into endless contention. Every decision to allow a deduction would be viewed as both a government endorsement and a form of government aid. But tax deductions that mirror economic reality are neither. Unfortunately, the bill confuses the economic justification for a deduction with the political issue of whether the conduct involved is popular. It would, however, be a prescription for economic disaster and Big Brother government to attempt to build a tax code on popularity rather than economics.

Thus, I believe that the proposed bill violates the First Amendment and is inconsistent with generally accepted principles of tax policy.

Sincerely yours,

BURT NEUBORNE.

ASSOCIATION OF
NATIONAL ADVERTISERS, INC.,
Washington, DC, September 23, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: The Association of National Advertisers, Inc. recently received copies of a letter from Harvard University Law School Professor Laurence Tribe and the September 22, 1992 Memorandum from Henry Cohen, Legislative Attorney with the Congressional Research Service, regarding the Harkin amendment and the constitutionality of banning or restricting tobacco advertising.

Several points need to be made about Professor Tribe's letter. First, it is very interesting that he felt it necessary in the letter to underline that he was taking no position on "the wisdom of this proposed amendment, or about its consistency with the First Amendment as I personally might construe it . . ." Professor Tribe, however, was willing to predict that the Supreme Court, under Chief Justice Rehnquist, would uphold the proposal.

While Professor Tribe is a respected constitutional scholar, his batting record as a prognosticator of Supreme Court decisions on First Amendment cases has been far from perfect. For example, just last year his confident prediction of the Court's decision in the flag burning case turned out to be completely wrong.

With regard to the September 22, 1992 CRS Memorandum and the 1990 CRS Report, which conclude that the United States Supreme Court would uphold a ban or other restriction of tobacco advertising, both are based, in several respects, on a misreading of the Court's First Amendment cases.

First, the conclusion of the 1990 CRS Report is based largely on a review of *dictum* from the Court's decision in *Posades de Puerio Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986). In fact, the CRS Report itself expresses serious doubt about whether this dictum represents the Court's view on First Amendment issues: "Serious doubts may be raised as to the likelihood that this dictum will become law. It was expressed by the majority in a 5 to 4 opinion, with the four dissenters still on the Court but only three of the five members of the majority still on the Court. Further, this dictum seems inconsistent with prior Supreme Court decisions that have indicated that, under the Constitution, it is generally more permissible for a legislature to ban an activity than to ban speech. This is because, generally speaking, speech, and not activities, is protected by the First Amendment." (page CRS-4).

It is important to note that in a series of commercial speech cases since *Posades* in 1986, the Supreme Court has never followed the *dictum* referred to in the CRS Report.

Second, the September 22nd Memorandum suggests that the two most recent First Amendment decisions of the Court have no relevance to the issue of banning or restricting tobacco advertising because they do not involve commercial speech. This is a simplistic and unpersuasive conclusion. It is true that neither of the cases, *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board*, 112 S.Ct. 501 (1991), or *R.A.V. v. City of St. Paul*, 60 USLW 4667 (June 22, 1992), directly involve commercial speech. However, in each case, the Court set forth a broad analysis of First Amendment policy which clearly offers lessons to the Congress as it considers proposals to ban or restrict commercial speech.

Indeed, the Court's analysis in *R.A.V.* specifically cited three commercial speech cases in support of its conclusion. While the *R.A.V.* case did not directly involve commercial speech, this certainly did not preclude the majority from discussing commercial speech issues in the context of its broad First Amendment analysis. In fact, the Court in *R.A.V.* specifically discussed when commercial speech could be differentially regulated, but significantly did not suggest that content-based distinctions would be permissible.

The Supreme Court has consistently recognized First Amendment protection for commercial speech since 1976. First Amendment cases thus are generally likely to have implications for commercial speech case law. It is simplistic to assert that First Amendment case law can be pigeonholed and separated into airtight commercial and noncommercial compartments.

In both of these cases, the Supreme Court held that the First Amendment takes the government out of the business of discriminating between "good speech" and "bad speech," based on its content. In *Simon &*

Schuster, the Court struck down a law that treated book royalties earned by a convicted criminal worse than other types of property owned by the criminal. In *R.A.V.*, the Court held that even the most offensive and reprehensible speech cannot be burdened on the basis of the viewpoint expressed. In both cases, the government was attempting to treat speech differently on the basis of its content, which is precisely what the Harkin amendment would do.

The Court's First Amendment decisions have created a rough hierarchy in the constitutional protection of speech. Core political speech has the highest level of protection; the Court has held since 1976 that commercial speech has somewhat less but still substantial First Amendment protection; obscenity and "fighting words" receive the least protection of all. In striking down the "hate speech" law in the *R.A.V.* case, the majority held: "Assuming, *arguendo*, that all of the expression reached by the ordinance is proscribable under the "fighting words" doctrine, we nonetheless conclude that the ordinance is facially unconstitutional in that it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." (Emphasis added.)

If that form of speech that has the least First Amendment protection, "fighting words," cannot be restricted or banned on the basis of content, it would be a strange doctrine, indeed, to argue that commercial speech, which has more First Amendment protection, could be banned or restricted on the basis of content.

Finally, the September 22nd Memorandum completely ignores another serious First Amendment defect presented by the proposed Harkin amendment. That amendment would use the tax code to shift funds from tobacco companies to opponents in order to finance anti-smoking messages. In a series of cases, the Court has held that the First Amendment prohibits the government from forcing a speaker to use his property to subsidize speech with which he disagrees. See, for example, *Pacific Gas & Electric Co.* v. *Public Utilities Commission*, 475 U.S. 1 (1986). The CRS Study simply ignores these cases.

Contrary to the simplistic conclusion of the September 22nd Memorandum, we believe that the two most recent First Amendment cases have significant value for the consideration of Congress. Further, we believe that those cases and others demonstrate that the Supreme Court would not uphold a ban or restriction of tobacco advertising on First Amendment grounds. More importantly, as Sheldon Cohen, former I.R.S. Commissioner has pointed out, totally separate from the constitutional considerations, the Harkin amendment would create broad precedents that would severely undermine the tax code.

It is important to note that the Senate has never had the chance to fully examine these complex issues, since there have never been any hearings on the Harkin amendment.

With all best wishes.

Sincerely,

DANIEL L. JAFFE.

SOFTWARE SYSTEMS INC.,
Louisville, KY, September 10, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: I understand that Senators Harkin and Bradley plan to offer an amendment to H.R. 11, The Revenue Act of 1992, to limit the business deduction for the cost of advertising tobacco products. This amendment represents a fundamental attack on all advertising and on the constitutional protection for commercial speech, yet the Senate Finance Committee has not held a hearing on this issue.

If the tax code can be used to penalize those companies that advertise and sell products we don't like, it can be used as a weapon against any form of controversial speech. If the proposal to limit the deductibility of advertising costs for tobacco products succeeds, what will be next?

A proposal to limit or deny the ordinary and necessary business deduction for advertising tobacco products singles out a specific form of speech and—because of its content—attempts to suppress it. The Supreme Court consistently has held that any government attempt to suppress protected expression because of its content is "so plainly illegitimate" as to render any law designed to achieve it automatically invalid. "*City of Los Angeles* v. *Taxpayers for Vincent*," 104 U.S. 2118, 2128 (1984).

The deduction of the cost to advertise any product is not a tax subsidy. The deduction is the same as the deduction for any other ordinary and necessary business expense. It constitutes no more of a subsidy for tobacco products than the deduction that any company, including tobacco companies, can take for the salaries of their employees, the cost of lighting and heating their buildings or the operation of their cars and trucks.

I strongly urge you to vote against any amendment to limit the deductibility of advertising expenditures for tobacco products or any other products. This debate is not over the use of tobacco products or the wisdom of federal tax policy. It is a fundamental debate over the freedom of commercial speech, and I hope you will vote to uphold this important constitutional right.

Best regards,

DORIS CONLEY.

THE PROCTER & GAMBLE MANUFACTURING CO.,
Cincinnati, OH, September 8, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: Procter & Gamble urges you to vote against the amendment Senator Harkin is offering to H.R. 11. This amendment would limit income tax deductions for the costs incurred in advertising tobacco products. In principle, this amendment represents extremely bad tax policy since it could prevent a relatively small and narrowly defined group of taxpayers from deducting what are clearly ordinary and necessary legitimate business expenses which are directly related to the production of income which is subject to tax.

In addition, the proposed amendment clearly violates the first amendment rights of the affected taxpayers and raises other serious constitutional issues because of the proposed application of funds generated by denial of the tax deductions.

We take no position on whether Congress, in the exercise of its legitimate function, should impose conditions or restrictions on the use of certain products. In the past Congress has made selected advertising media unavailable to certain industries, but these limitations have been imposed directly, not through denial of income tax deductions for legitimate expenses. Any additional Congressional actions in this area should also be done directly without resort to the Tax Code.

For the reasons cited above, we strongly urge you to vote against the Harkin Amendment to H.R. 11. Thank you for your consideration of our views.

Sincerely,

MARVIN WOMACK.

FRUIT OF THE LOOM,
Bowling Green, KY, September 8, 1992.

Hon. MITCH MCCONNELL,
U.S. Senator, Russell Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: It has come to my attention that the United States Senate will soon resume consideration of the tax/urban aid bill. Senator Tom Harkin of Iowa is proposing an amendment that will limit the business deduction for the cost of advertising and promotion of tobacco products. I am writing this letter in hopes that you will help defeat the Harkin Amendment to HR–11.

Although this amendment would reduce the deductibility from 100% to 80%, and only applies to tobacco, it represents a fundamental attack on all advertising and on the constitutional protection for commercial speech. If the amendment is adopted, the tax code will become a vehicle by which Congress can punish any advertising that they do not feel is "politically correct" (defined as any product or service category that is out of favor with some special interest group).

Not only is there a threat to the Constitution inherit in the Harkin Amendment, it also threatens our economy. Advertising creates demand, which in turn creates jobs. It is a keystone to a free-market system. It is a legitimate business cost and an investment in growth for both large companies and small businesses alike. To penalize businesses, and thereby reduce job opportunities for Americans during these recessionary times, is bad tax policy and irresponsible.

Therefore, Senator, as a businessman and as a free-speaking citizen, I urge you to please help defeat this amendment. Your support will prevent erosion of our First Amendment rights while continuing to provide the general public with information that enables them to make educated choices about products and services they desire.

I thank you for your time and support.

Sincerely yours,

JOHN LACHIUSA,
Marketing Manager, Activewear.

NATIONAL BEER WHOLESALERS ASSOCIATION, INC.,
September 11, 1992.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: Sen. Harkin has announced his intention to offer a floor amendment to H.R. 11, the Revenue Act of 1992, that would partially disallow the business expense deduction for advertising of tobacco products. Many of the same specious arguments used by Mr. Harkin against tobacco advertising have also been used against beer. For the following reasons, the amendment should be defeated:

It sets an unfortunate and dangerous precedent for using the tax code to discriminate against legal products. Next on the list might be beer and wine advertising, followed by oil and auto company ads, red meat, sugared cereals, eggs, disposable diapers and any other product that is deemed to be out of favor.

It incorrectly assumes that advertising causes increased consumption in mature product categories like tobacco and alcoholic beverages. Certainly, there is no empirical evidence that advertising causes people to drink.

It does not withstand 1st Amendment scrutiny. The amendment is targeted on specific product ads based solely on official disapproval of the content of the ads.

The Harkin amendment fails the test of reasonableness and constitutionality. The National Beer Wholesalers Association (NBWA), representing family businesses that distribute America's beverage, urges your opposition to the Harkin amendment.

Thank you for your consideration.

Sincerely,

RONALD A. SARASIN.

AMERICAN CIVIL LIBERTIES UNION,
Washington, September 23, 1992.

DEAR SENATOR: The Senate will soon consider an amendment offered by Senator Harkin to H.R. 11, the Revenue Act of 1992, that would reduce the tax deductibility of business expenses associated with the advertising and promotion of tobacco products. The American Civil Liberties Union urges you to reject the amendment as an infringement of First Amendment rights because it targets a particular viewpoint on a legal product for unfavorable treatment.

Whatever one's speculation about how the current Supreme Court might rule on this statute, the ACLU believes that it violates the clear principle that the government should not favor one speaker over another, whether the speech is commercial or noncommercial, based on the government's opinion of the content of the speech.

The Supreme Court has repeatedly found that content-based distinctions violate the central tenets of the First Amendment. The Court has said that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department* v. *Mosley*, 408 U.S. 92, 95 (1972). Restrictions on speech that are permitted under the Constitution, such as time, place, and manner restrictions, must also be "justified without reference to the content of the regulated speech." *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). See also *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 804–05 (1984).

The principle of content neutrality is so great that the Court has recently held that even speech otherwise considered unprotected by the First Amendment, such as obscenity and fighting words, cannot be subjected to content discrimination that attempts to suppress the communication of particular ideas. *R.A.V.* v. *City of St. Paul*, 60 U.S.L.W. 4667, 4669 (June 23, 1992). While the level of protection accorded by the Supreme Court to commercial speech is less than noncommercial protected speech, it is substantially greater than the protection attached to "unprotected speech." To rule out the bar against content-discrimination entirely would be to accord commercial speech less protection than so-called unprotected speech. This is not what the Court has done.

As the Court wrote in *Leathers* v. *Medlock*, 111 S.Ct. 1438 (1991), "a tax scheme that discriminates among speakers does not implicate the First Amendment unless it discriminates on the basis of ideas." The proposed Harkin Amendment does precisely that.

In establishing the test for commercial speech, *Central Hudson Gas & Electric Corp.* v. *Public Service Commission*, 447 U.S. 557 (1980), the Court held commercial speech is entitled to First Amendment protection if it concerns lawful activity and is not misleading. In laying out the criteria for determining if a restriction was valid, the Court did not deal with viewpoint distinctions because the issue was not raised and the Court, in any case, invalidated the statute.

The assertion, made by the Congressional Research Service, that tobacco advertising could be banned altogether flies in the face of modern precedent. It relies on *Capital Broadcasting Co.* v. *Mitchell*, 333 F. Supp. 682 (D.D.C. 1971), aff'd without opinion, 406 U.S. 1060 (1972), relating to the ban on tobacco advertising over electronic media. However, whatever precedential value that decision may have, was impaired by the Court in *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the case that marked the beginning of the modern commercial speech doctrine. A complete ban on tobacco advertising would give the government an opportunity to censor a nonmisleading speech about a legal product, without leaving open alternative channels of communication. No where in modern First Amendment law or cases has the government ever been regarded as having such power. If this passed constitutional muster, legislatures could always avoid dealing directly with products they do not like by aiming their prohibitions, not at the products, but at the speech about the products. The First Amendment does not permit speech to be the vehicle for suppressing the product, particularly where the product itself is fully within the regulatory authority of the government.

Reliance on dicta, which is often little more than judicial speculation, in *Posadas De Puerto Rico Associates* v. *Tourism Company*, 478 U.S. 328 (1986) is misplaced. While the Court offered the off-hand remark that the power to bar a product or activity completely entails the lesser power as well to forbid commercial speech about the activity, this is clearly wrong as a legal proposition, and the Court has gone to great lengths to avoid supporting this theory. Two prominent recent examples are representative of these cases. In *Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750 (1988), the power to ban all newsracks did not also include the lesser power to choose among the speakers whose newsracks that could be placed on city streetcorners. In *R.A.V.* v. *City of St. Paul*, 60 U.S.L.W. 4667 (June 23, 1992), the Court held that the power to ban all fighting words did not permit a city to ban only certain fighting words on the basis of offensiveness.

Finally, tax deductibility of business expenses cannot be regarded as the equivalent of a government subsidy, as the supporters of this amendment claim. If this were true, then the property tax exemptions afforded religious institutions would violate the separation of church and state by amounting to a government subsidy of religion. If tax deductibility were the equivalent of a government subsidy, other business expenses that are deductible relating to abortion services, for example, would also become a subject of great contention in the Congress. Instead, Congress should treat all business expenses the same, whether of favored or disfavored services and products, so long as they are legal.

We urge you to reject the Harkin amendment to H.R. 11 relating to the tax deductibility of promotional business expenses for tobacco products.

Sincerely,

MORTON H. HALPERIN,
ROBERT S. PECK,
Legislative Counsel.

[From Food & Beverage Marketing, February 1992]

A CAMEL WRONGED

(By Joel S. Dubow)

Poor Old Joe! First they complained about his nose, and now they are accusing him of pushing RJR's Camel cigarettes to children. The Coalition on Smoking and Health has asked the FTC to go camel hunting, calling the campaign "the most egregious example in recent history of tobacco advertising targeted at children."

I do not smoke, I oppose smoking, and I support the general goals of the American Cancer Society, the American Heart Association, and the American Lung Association—the members of the Coalition. On the other hand, I recognize others' rights to smoke as long as they do not exhale—at least in my presence. Furthermore, I am a strong believer in the First Amendment, even concerning cigarette advertising.

Now, as the coiner of Dubow's First Law of Marketing Research ("What you know depends on how you know it."), and as the discoverer of Twain's corollary ("It ain't what you don't know that worries me, it's what you know that ain't so."), let me tell you what I found upon close examination.

The AMA's output—the sum total of three articles in the association journal, the publicity on their behalf, and the Coalition's derivative petition—is the most egregious example of improperly conducted and interpreted, publicly funded research that I have ever seen. Two of the three studies are only slightly flawed, but the one entitled "RJR Nabisco's Cartoon Camel Promotes Cigarettes to Children" is truly terrible. The key "findings and implications" of this study are:

1. The Old Joe copy was more appealing to high school students than adults 21 and older; therefore RJR must be targeting the advertising at high school students.

2. High school students claimed higher exposure to, and demonstrated greater familiarity with the advertising than did adults; therefore, again, RJR must be targeting the advertising at high school students.

3. Since the Old Joe campaign began, Camel share among the "illegal children's cigarette market" has increased from 0.5% to 32.8%; therefore, the campaign is far more successful at marketing Camel cigarettes to children than adults.

What's wrong with these "findings and implications?" A lot! First, because RJR has stated its target audience as young adult (18–24) smokers, comparisons to all adults are inappropriate—yet the study's median adult age was 40, the oldest 87 (!) and the youngest 21 (not 18). My best guess is that the number of 18–24 year old adults in the study does not exceed 30, while the high schoolers number 1,060.

This improper comparison helps explain the first "finding." Of course an adult sample with a median age of 40 will deem a cartoon character as less "cool," less "interesting" and less "someone I would like to be friends with" than would a teenage sample (or adults 18–24).

The implication drawn from the second "finding" comes from naivete regarding advertising familiarity. Younger people recall nearly all advertising better than do older people. But the above flaws are nothing compared to those attendant to the third "finding." As a former advertising research manager who did deal with products targeted toward teens (soft drinks), I know the impossibility of impacting their behavior to the alleged extent. So I dug into things a bit. I

read the original article carefully and noticed that (1) the "market share" data were not behavioral data, but statements of brand preference, and (2), worse still, they were gathered after the teenage respondents had been exposed to seven (count 'em, seven) Camel ads! This is truly the worst example of question order bias that I have ever seen; and it invalidates any comparison to baseline measures unless they used similar procedures.

Did they? To answer that question I searched out the "seven surveys completed prior to the kickoff of Camel's Old Joe cartoon character campaign early in 1988." I found that they were more traditional surveys conducted without commercial exposure. Of the five published studies, one was conducted in England and one in Australia. Two (one in 1977, one in 1982) used the representative American city of Bogalusa, Alabama. The fifth was conducted in Augusta, Georgia in (as near as I can tell) 1984 or 1985. The other two were unpublished, but a phone call led me to discover that they occurred in the late 1970's and early 1980's.

From this kind of research and logic came conclusions like: ". . . the illegal sale of Camel cigarettes to children under 18 . . . is estimated to have risen from $5 million per year prior . . . to $475 million per year now," and "Our study provides further evidence that tobacco advertising promotes and maintains nicotine addiction among children and adolescents. A total ban of tobacco advertising and promotion . . . can be based on sound scientific reasoning." This last despite an absence of any evidence indicating that "Old Joe" had increased the likelihood of high school students becoming smokers.

Let me close with my best guess about how RJR's "Smooth Character" campaign has actually worked. Its stated purpose is to induce people who already smoke, presumably younger, more switchable people, to switch to Camels. The premise of the campaign is to do so by dispelling the misperception that Camels are harsher than competitive brands.

My guess is that the campaign is working that way—inducing younger people who smoke to become more likely to smoke Camels. As a by-product, because targeting toward adults 18–24 will also produce a large media spillover to teenagers, I surmise that the campaign is also inducing high school students who decide to smoke, to smoke Camels. But I see no evidence that it is leading high schoolers to decide to smoke. I do not know whether the people at RJR planned it that way or just got lucky.

[From Fortune magazine, April 25, 1988]

THE HEALTH POLICE ARE BLOWING SMOKE

(By B. Bruce-Briggs)

The war against smoking is turning into a jihad against people who smoke. Smokers are being exiled from public and private places and are facing discrimination in employment. The reason, we are told, is that tobacco is deadly not only to users but also to innocents exposed to its noxious fumes.

The truth is that America is suffering an epidemic of politically motivated hypochondria. Not only the liberty of smokers is threatened. Three decades ago the U.S. Public Health Service had apparently defeated its statutory enemy, communicable diseases, and decided to preserve itself by policing our private health. Smoking was the first target—a trial run in social manipulation. Sniffing victory in this skirmish, the feds are now turning their weapons on drinking, eating, and sex.

But, you sputter, isn't the evidence conclusive that my smoke affects your health? Let me introduce you to the basics of scam science as generated for the feds. Smoking will be the example because it is the test case, but much of this mode of argumentation will be familiar to victims of the pollution, radiation, and toxic scams. All have their roots in the ambitions of the Public Health Service.

Note first the duplicitous use of words: Toxic means poisonous, but does not specify at what dose. Everything is toxic if ingested in sufficient quantity. This magazine is toxic—eat enough copies and you will get sick. Anyone who describes a substance as toxic without stating the dose level is engaging in flimflam; e.g., the Surgeon General informing us that cigarette smoke is "toxic."

Carcinogenic usually means that a group of rodents exposed to megadoses of a substance will have slightly higher cancer rates than a control group. Or it may mean merely that the unfortunate rodents had a few more tumors, or that slight genetic differences appeared in later generations. Too much oxygen, one scientist has determined, is carcinogenic. Anyone who says that something is carcinogenic without specifying the circumstances is a faker. And beware such labels as "linked," "associated with," "suspected," and "related"—these are pseudoscientific McCarthyscam.

Then there is the "no-threshold" scam: If megadoses kill rats, any dose, however tiny, must be assumed lethal to people, absent evidence to the contrary. A more elaborate version is the "linear no-threshold extrapolation." Take data purported to show adverse health at high dosages and draw a straight line to zero to invent ill effects of infinitesimal exposures.

This perversion of toxicology has a cozy symbiosis with "epidemiology." The curiously mislabeled study of health statistics, epidemiology was a benign academic backwater, infested by harmless drudges, until federal funding made it malignant. Most of the work is crude input-output analysis masquerading as precise statistical correlations, using data that are often appallingly inaccurate. The input is typically behavioral or environmental activity—smoking, for instance—established by survey questionnaires, which are notoriously unreliable. Output usually takes the form of death rates, as established by death certificates—documents quite unsuited for statistical research, since physicians often diagnose causes of death only roughly.

When no data exist, the health statisticians generate their own. A favored device is the "case control" method of comparing an affected group with a control group. The drawback here is that researchers have enormous latitude in picking control groups. Even studies using apparently similar groups can yield incredibly varied conclusions that cannot be replicated. For example, in studies cited by the Surgeon General using nonsmokers as control groups, putative lung cancer rates for smokers range from 20% to 3,500% higher.

Here's how the drill works: A toxie gets a government grant to terminate rats by all but drowning them in a suspect compound. He reports that whatzatapyrene is "carcinogenic." Because of the no-threshold principle, the feds can tell the public that "no safe dose level has been established." Next an epie gets a bigger grant to conduct a body count. He discovers that of 87,000 whatzat workers over 30 years, 46 succumbed to cancer. But the epie has calculated 22.7 "expected" deaths from the cancer in a comparable normal group, so the relative risk of whatzatapyrene exposure is 2.03. The feds tell the press that whatzateers are "twice as likely to get cancer."

Epidemiological results are conventionally reported as "risk ratios." For example, contract researchers for the FAA might calculate that people who live near airports have a risk ratio of death from falling aircraft engines of 7.5 to 1 compared with the normal population, meaning their risk is 7½ times higher, to hide the vital fact that falling engine fatalities are rather infrequent. Today all seriously untoward health events are rare. That's surely why the feds and their vendors are loath to inform us of the relevant risk data, which are the actual rates at which people suffer falling-engine trauma or contract lung cancer. Although the Public Health Service has been reticent about publicizing the fact, every study cited in support of the statement that "cigarette smoking causes cancer" reveals that a smoker is thoroughly unlikely to get cancer—only that he is statistically more likely to get it than a nonsmoker. No one can say precisely how much more likely. This is true of all supposed "carcinogens."

Perhaps this is why people continue to smoke despite the increasingly shrill scoldings they are subject to. So lately the feds have escalated the war. Their most ingenious weapon for converting private health into public health is the "determination" that secondhand smoke—or passive smoking, or in fed parlance, environmental tobacco smoke (ETS)—harms the public at large. In late 1986 two general surveys of the state of knowledge on ETS were published by the PHS and its contractors. Now follow closely and track scam science in action.

The heart of the health service report is a series of epidemiological studies comparing the lung cancer deaths of the spouses (mostly wives) of smokers with the spouses of nonsmokers, expressed as ratios, not rates. None of the studies took into account effects of common heredity, environment, and infection. Of the 13 studies, three showed that the smokers' wives had comparable or slightly better health—but these studies are worthless because they fail to meet conventional statistical standards. Eight more studies show that the smokers' wives are 3% to 103% more likely to get lung cancer—but these studies are also statistically suspect. That leaves a Greek case-control study and a Japanese study, both of which seem to show that having a smoking husband can be more dangerous than smoking. Both have been attacked in the medical press.

Yet the Surgeon General has announced that these 13 studies prove the evils of passive smoking.

The other survey of environmental tobacco smoke was conducted by the National Research Council of the National Academy of Sciences. The NRC used to be the premier sources for fairly accurate and disinterested evaluations of current science, but lately has become a prestige vendor of sci-prop. An NRC panel, engaged by the PHS and the Environmental Protection Agency, averaged a group of studies that include most of the ones cited above and came up with a risk ratio for spouses of smokers of 1.34 to 1 (1.32 to 1 for women). They then concluded that the probable risk was about 1.25 to 1, though in the executive summary the risk was boosted to 1.3 to 1.

It is worth noting that the largest study of smoking conducted to date, by the American Cancer Society in the 1960s, found that women who smoked one to nine cigarettes a day had a lung cancer risk ratio of 1.3 to 1

compared with nonsmokers. Passive smoking is not only bad for women, it seems; it is just as bad as active smoking.

Alcohol is next on the feds' hit list. A study has already "determined" that alcohol "causes" cancer, and learned scientists have taken the next step. In a catalogue of cancer risks posed by various substances, British researchers Richard Doll and Richard Peto estimate that alcohol is responsible for 3% of American cancer deaths. Wine has been discovered to contain carcinogens. The Public Health Service, among other groups, is urging warning labels for alcoholic beverages. Can we doubt that ingenious researchers will ultimately calculate the toxic effects of passive drinking—errant molecules of alcohol from highballs in the box seats statistically killing innocents in the bleachers?

The authorities also complain that we eat too much, and that we don't eat what they think we should. Our heart attacks are a public health problem. Doll and Peto suspect that 35% of cancer deaths are caused by diet, even more than by smoking. Other epidemiologists are calculating how much cancer is caused by burning food. Watch out, restaurant operators and bachelor cooks. The new guardians of the public virtue have even begun collecting information on sexual conduct—when women lose their virginity, the proportion who marry when pregnant—under the rubric of health data. One researcher avers that sperm may be carcinogenic.

What are the implications for business? The entrepreneurial reader may already be slobbering to get his snout into the pork barrel. The federal government, after all, funds about 85% of basic health research. Alas, the business is a classic cartel, administered by a narrow trust, with strictly controlled entry. The big winners include the disease lobbies and such institutions as the Harvard School of Public Health.

More to the point, no industry is immune to the ravages of scam science. The feds are now trying to ban tobacco advertising in its surviving forms. As the Surgeon General has said, "There is no safe cigarette." And no such thing as a safe automobile, or a safe food, or a safe airline flight, or a safe ski, or a safe cosmetic, or a safe condom. Nothing is safe as long as the authorities define private health as public health.

Mr. BENTSEN. I yield 2 minutes to the distinguished Senator from South Carolina.

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

Mr. THURMOND. Mr. President, I rise today in strong opposition to this amendment which would reduce the tax deductibility of tobacco advertising.

I do not smoke and do not advocate smoking. However, tobacco is a legal product and as long as it is legal, I will work to ensure that the industry is able to conduct business on an equal footing with other industries. This amendment would hamper the ability of the tobacco industry to do business. It is unfair to single out one industry and reduce this legitimate business deduction while allowing other industries full deductibility for the same expenses.

This amendment also raises serious first amendment concerns because it places restrictions on speech based solely on its content.

This amendment is simply an attempt to penalize the tobacco industry because some do not like the products they produce. I urge my colleagues to vote against this ill-advised amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, I yield 5 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BURNS. Mr. President, I stand today in strong opposition to the amendment to the Revenue Act of 1992, H.R. 110, partially disallowing tax deductions for tobacco product advertising and promotion expenses. Any net revenue generated by the amendment would be distributed to the States, for distribution by the States in the form of Federal income tax credits to certain taxpayers who produce antitobacco advertising materials, or who make space available for such advertising in lieu of accepting more profitable advertising.

The amendment should be rejected. The amendment rests on mistaken assumptions; would violate the first amendment; would impose severe administrative burdens on the Secretary, the States and taxpayers; and would establish a dangerous precedent. Similar proposals previously have been opposed on first amendment grounds by groups as diverse as the American Civil Liberties Union, the Washington Legal Foundation, and the Freedom to Advertise Coalition.

FIRST AMENDMENT

The amendment would violate the first amendment because it would target tobacco product advertising and promotion uniquely and exclusively, based solely on official disapproval of its expressive content or communicative impact.

Just last December, the Supreme Court reaffirmed that "(a) statute is presumptively inconsistent with the first amendment if it imposes a financial burden on speakers because of the content of their speech." *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board*, 112 S.Ct. 501, 508 (1991). The Court stressed that "(t)he Government's power to impose content-based financial disincentives on speech * * * does not vary with the identity of the speaker." Id. at 509.

The Court has made clear the "speech" includes all forms of communication—from magazine advertising to product demonstrations. *See Board of Trustees* v. *Fox*, 109 S. Ct. 3028 (1989) ("Tupperware" parties). When the Government legislates with respect to an activity because of its expressive content or communicative impact, it is legislating with respect to "speech" for purposes of the first amendment. See, for example, *Texas* v. *Johnson*, 461 U.S. 397 (1989)—flag burning; *R.A.V.* v. *City of St. Paul*, 60 U.S.L.W. 4667, 4669, 4672 n.7 (U.S. June 22, 1992)—cross burning.

The Supreme Court has long recognized, moreover, that "speech can be effectively limited by the exercise of the taxing power" (*Speiser* v. *Randall*, 357 U.S. 513, 518 (1958)—just as it can be limited more direct types of regulation. The Court has not hesitated to invalidate taxes over the years because of their impact on Speech. See, for example *Grosjean* v. *American Press Co.*, 297 U.S. 233,250 (1936): *Minneapolis Star & Tribune Co.* v. *Minnesota Cmm'r of Revenue*, 460 U.S. 575,585 (1983).

Conversely, the Court has upheld the disallowance of certain Federal tax deductions precisely because Congress had not invidiously discriminated against disfavored speech. See *Cammarano* v. *United States*, 358 U.S. 498,513 (1959); *Regan* v. *Taxation with Representation*, 461 U.S. 540,548 (1983). As the Court states in Cammarano, "everyone in the community should stand on the same footing—with respect to first amendment activity—so far as the Treasury of the United States is concerned." Far from leaving all taxpayers "on the same footing," the amendment would (under sec. 45(a)) give a tax credit to taxpayers who produce antismoking advertising campaigns.

Tobacco advertising and promotion cannot be treated differently from other advertising and promotion under the Internal Revenue Code based solely on its expressive content or communicative impact. Because the proposed disallowance of the expense deduction would fall on tobacco product manufacturers based solely on the expressive content or communicative impact of their activity, it would be "repugnant to first amendment principles." *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U.S. 221 (1987).

The amendment would violate the first amendment because it would force the tobacco product manufacturers, as a condition of advertising, to finance counteradvertising by third parties.

Under the proposed amendment, advertising tobacco products means financing antitobacco messages by third parties. The Supreme Court has long held, however, that Government has no such power to condition the right to speak. See *FCC* v. *League of Women Voters*, 468 U.S. 364 (1984); *Perry* v. *Sindermann*, 408 U.S. 593 (1972); *Speiser* v. *Randall*, 357 U.S. 513 (1958). In addition, a series of Supreme Court cases affirm that Government may not tell private parties what to say or force private parties to use their own property to facilitate the speech of others.

In *Pacific Gas & Electric Co.* v. *PUC*, 475 U.S. 1 (1986), the Court held that the California Public Utilities Commission could not require a utility to include in its monthly billing envelopes communications opposing the utility's views. In *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), the Court

struck down a Florida law requiring any newspaper that criticized a political candidate to print, free of cost to the candidate, any reply that the candidate might make to the newspapers charges. In *Wooley* v. *Maynard*, 430 U.S. 705 (1977), the Court held that the State of New Hampshire could not require a motorist to display a license plate bearing a message with which the motorist disagreed. See also *West Virginia State Bd. of Education* v. *Barnett*, 319 U.S. 624 (1943)—compulsory flag salute.

In Tornillo and PG&E, it was a private party's speech activity that triggered the statutory obligation to carry counterspeech. Under the proposed amendment, it likewise would be a private party's speech activity-tobacco product advertising and promotion-that would trigger an obligation to finance counter advertising. The proposed amendment would be invalid for the same reason. See also *Memphis Publishing Co.* v. *Leech*, 539 F. Supp. 405, 410 (W.D. Tenn. 1982)—Statute requiring newspapers to publish a warning of 30 percent of the size of their alcohol advertisements "improperly intrudes on editorial discretion by offering only a forced choice before foregoing copy or publishing that which would not otherwise be published."

Private parties have the right to be free from burdens on their own speech imposed in order to "enhance the relative voice" of others. PG&E, 475 U.S. at 14. "The idea that Government can restrict the speech of some elements of society to enhance the relative voice of others is wholly foreign to the first amendment." *Dun & Bradstreet. Inc.* v. *Greenmoss Builders. Inc.*, 472 U.S. 749, 773 n.4 (1985)—White, J., concurring. *Accord Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290, 295 (1981); *Buckley* v. *Valeo*, 424 U.S. 1, 49 (1976).

The amendment cannot be justified on the basis of the Government's power, in appropriate circumstances, "to require that a commercial messages include such additional information, warnings, and disclaimers as are necessary to prevent its being deceptive." *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council. Inc.*, 425 U.S. 74, 771 n. 24 (1976). The amendment does not seek to cure any such supposed defect in cigarette advertising. It seeks to force tobacco products manufacturers to subsidize antismoking campaigns by third parties. Cigarette advertisements of course, already include health warnings by third parties. Cigarette Labeling and Advertising Act.

MISTAKEN ASSUMPTIONS

The amendment mistakenly assumes that the advertising and promotion expense deduction is a taxpayer subsidy.

Our tax system is based on the premise that net income should be taxed, with deductions being permitted for costs reasonably incurred in producing that income. The deduction for advertising expenses-like deductions for other ordinary business expenses-simply implements the net income concept. It no more provides a subsidy for advertising than the deduction for payroll expenses provides a subsidy for hiring workers.

The amendment does not simply conform the treatment of tobacco product advertising and promotion expenses to that accorded business meals and entertainment under the 1986 tax bill.

The 1986 tax bill partially disallowed deduction for all business meals and entertainment expenses—not just those incurred by a particular industry, or those involving discussions of particular products or services. Further, the 1986 tax bill provides no precedent for treating advertising and promotion, which enjoy first amendment protection, less favorably than other income-generating business activity.

The amendment will not be budget-neutral if, as may be expected, it operates to curtail tobacco product advertising and promotion.

By making tobacco product advertising and promotion significantly more expensive, the amendment enviably would reduce the amount spent on such advertising and promotion. This would affect adversely the advertising industry and all advertising media, newspapers, magazines, outdoor companies, point-of-sale concerns, retail outlets, et cetera. The earnings of these sectors would decline correspondingly, and unemployment would increase. The result would be less Federal tax revenue and more demands on Federal, State unemployment and public assistance programs. This would offset any increase in revenue produced by the amendment.

The amendment incorrectly assumes that tobacco product advertising causes people to smoke.

As the President's Council of Economic Advisers has stated:

> There is little evidence that advertising results in additional smoking. As with many products, (cigarette) advertising mainly shifts consumers among brands.

Michael Pertschuck, the former Chairman of the Federal Trade Commission who now helps direct the antismoking lobby, stated nearly a decade ago that:

> No one really pretends that advertising is a major determinant of smoking in this country or any other.

In striking down Canada's tobacco advertising ban last summer, the Quebec Superior Court found the Government's evidence of a link between tobacco ad bans and consumption to be deficient, if not nonexistent.

The fact is that cigarette advertising and consumption are unrelated. The authors of a recent study published in the Journal of the Norwegian Medical Association report that the ban on tobacco advertising imposed in that country in 1975 has had no discernible effect on the incidence of smoking. The incidence of juvenile smoking in Finland is higher today than it was in 1978, when tobacco advertising in that country was banned. A four-country study by WHO researcher found no systematic differences between juvenile smoking in those countries where tobacco advertising is completely banned and those countries in which it is not.

If curtailing tobacco product advertising and promotion did result in reduced consumption, the decrease in revenues produced by declining sales would more than offset the increase in revenues produced by disallowing the expense deduction.

The amendment incorrectly assumes that the antitobacco message needs further amplification.

As one academic expert in communications has put in testimony to Congress, "the level of public awareness on smoking and health issues in virtually unprecedented in the history of our country." More Americans are aware of the allegations with respect to smoking and health than can identify George Washington or know when our Nation declared its independence. Nearly every American believes that smoking is harmful but only 1 of 3 Americans knows who delivered the Sermon on the Mount. The antismoking message receives more free media daily than almost any other issue. Antismoking messages, moreover, are taught to our Nation's children at every level in school. As long ago as 1979, the Surgeon General reported that, "by the time they reach seventh grade, the vast majority of children believe smoking is dangerous to one's health."

ADMINISTRATIVE BURDENS

Whether a particular taxpayer receives the credit under the amendment—and how much of the credit the taxpayer receives—would depend on: First, the extent to which the partial disallowance had been projected by the Secretary of the Treasury to produce net revenue in the calendar year; second, how much of that net revenue has been allocated to the taxpayer's State under a formula provided in the amendment; and third, whether and to what extent the taxpayer has been selected by the State to share in the funds available for tax credits under a formula and timing mechanism to be established by the State. The taxpayers selected to receive tax credits presumably would be those who produce and carry antitobacco advertising materials as part of the State program.

The amendment would thus place a significant administrative burden both on Treasury, which must determine accurately the net revenue gain taking into account a host of relevant variables, and on each State government, which must apportion the Federal credits and notify taxpayers of their allowable portion. For example, Treasury

would have to estimate not only what the aggregate tobacco product advertising and promotion expenditures would have been without the amendment in a particular year, but also what revenue losses will result from decreased advertising and promotion receipts in that year because of the amendment. These revenue losses will result from decreased spending by the tobacco product manufacturers and decreased earnings in the advertising industry and the media that carry tobacco product advertising.

Just as important, the amendment presumably would require taxpayers claiming the credit to file amended returns as Treasury refines its prior years estimate of the credit available, and the amount to which each State actually is entitled.

DANGEROUS PRECEDENT

The proposed amendment is only the latest in a series of attempts to use tax code to penalize disfavored speech or use a tax on speech as an instrument of social policy. For example, bills have been introduced in previous Congresses to ban tax deductions for beverage alcohol advertising expenses, for arm-sale promotion expenses and for advertising expenses for persons who discriminate in their advertising practices on the basis of race, color, or ethnic background.

If the Federal Government may force tobacco products manufacturers to finance antismoking messages, it also may force oil companies and automobile or even disposable diaper manufacturers to finance environmentalist messages. It may require producers of meat, egg, or high salt foods or sugared cereals to finance diet-advice messages. It would be not only inconsistent with the first amendment but profoundly unwise as a matter of policy for the Federal Government to start down this dangerous road.

As Eugene Thomas, the former president of the American Bar Association, commented wryly: I don't mind the principle if you let me apply it to all the things I dislike. But if you want to apply it to all the things you dislike, then I'm worried. Interview, Advertising Age. February 23, 1987, page 80.

Mr. President, I think we are starting down a very dangerous road.

I ask unanimous consent that letters from folks who do not support this amendment—The National Legal Foundation, Think First, and the National Association of Broadcasters—be printed in the RECORD.

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

WASHINGTON LEGAL FOUNDATION,
Washington, DC, August 5, 1992.

Hon. WENDELL H. FORD,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: I am writing in response to your letter requesting the legal opinion of the Washington Legal Foundation on the constitutionality of proposals to eliminate the tax deductibility of advertising expenses on a product-specific basis. After careful review, we have concluded that such proposals are unconstitutional content-based restrictions in violation of the First Amendment.

The Supreme Court has held time and again that advertising is entitled to constitutional protection. As the Court has said, "[t]ruthful advertising related to lawful activities is entitled to the protections of the First Amendment." In re R.M.J., 455 U.S. 191, 203 (1982). And just a few weeks ago, the Court said that a law is "facially unconstitutional if it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." *R.A.V.* v. *St. Paul*, No. 90-7075, slip op. at 3 (June 22, 1992). Clearly, proposals—which target the tax deductibility of advertising on a product-specific basis—would run afoul of this principle.

The fact that proposals attempt to achieve censorship indirectly, through manipulation of the tax system, is irrelevant under the First Amendment. The Supreme Court has long recognized that discriminatory taxation may impermissibly infringe First Amendment rights. *Speiser* v. *Randall*, 357 U.S. 513, 518 (1958). By eliminating the tax deductibility of advertising of certain products, the government seeks to impose "a financial burden on speakers because of the content of their speech." *Simon & Schuster* v. *Members of the New York State Crime Victims Board*, 112 S.Ct. 501, 508 (1991). Such proposals would be condemened by the Supreme Court because they would "single out income dervied from an expressive activity for a burden the [Government] places on no other income, and is directed only at works with a specified content." Id. at 508.

It may be argued that such proposals are justified because of some supposedly "unique" dangers. However, such an argument would be undercut because certain product advertising was singled out for disparate treatment at the same time that the Government continued to accept advertising for other "dangerous" products or activities. *Friends of the Earth* v. *FCC*, 449 F.2d 1164 (D.C. Cir. 1971) (holding that public health concerns raised by ads for cigarettes and for automobiles were indistinguishable).

Sincerely,

ALAN M. SLOBODIN,
President and General Counsel,
Legal Studies Division.

THINK FIRST.

DEAR SENATOR: The undersigned organizations, representing a broad cross-section of American industry and literally thousands of companies across the United States, strongly urge you to oppose the Harkin amendment to H.R. 11, the Revenue Act of 1992. The Harkin amendment would limit the business deduction for the cost of advertising tobacco products.

We urge you to oppose the Harkin amendment for three reasons.

First, the Harkin amendment is unconstitutional. The First Amendment prohibits the government from singling out any form of speech and suppressing it because of its content. Yet that is exactly what the Harkin amendment would do. Enclosed are letters from the American Civil Liberties Union, the Washington Legal Foundation and the Freedom of Expression Foundation describing the constitutional defects with the Harkin amendment.

Second, the Harkin amendment is bad tax policy. The tax code currently permits deductions for all necessary costs of producing income, including advertising. Because it singles out a specific industry for onerous differential treatment, the Harkin amendment perverts the tax code. The amendment would also create an administrative and regulatory nightmare for Treasury and 50 state revenue departments.

Third, the Harkin amendment would set a dangerous precedent. If the tax code can be used to penalize those companies that advertise and sell products that some people don't like, it can be used as a weapon against any legal product or service. If the Harkin amendment becomes law, the tax code could become a vehicle for punishing any advertising which a shifting majority of Congress decides is not presently "politically correct." A fact sheet describing why the Harkin amendment is bad tax policy, bad public policy, and unconstitutional is enclosed.

For all of these reasons, we strongly urge you to oppose the Harkin amendment.

American Association of Advertising Agencies.
American Advertising Federation.
Association of National Advertisers, Inc.
Direct Marketing Association, Inc.
Magazine Publishers of America.
National Newspaper Association.
Outdoor Advertising Association of America.
Point of Purchase Advertising Institute.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, DC, August 6, 1992.

Hon. LLOYD BENTSEN,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We understand that Senator Harkin plans to offer an amendment to H.R. 11, the Revenue Act of 1992, which would limit the business deduction for the cost of advertising tobacco products. NAB is strongly opposed to this amendment.

NAB's membership has no direct stake in this fight. Beginning in 1971, the federal government banned advertising of cigarettes and other tobacco products on the electronic media. While the amendment clearly is designed to eliminate or reduce tobacco advertising, local radio and television stations and the networks will not lose advertising revenues as a result.

We fully share the concerns of the many advertising and media groups that oppose this amendment because it is contrary to the First Amendment, and is bad tax policy, as well. The unique danger for radio and television stations throughout the nation, however, is that this amendment would set a clear precedent by which the government will seek to single out other disfavored product categories for similar discrimination in the tax code.

We believe the First Amendment clearly forbids the government from singling out any form of speech and suppressing it because of its content. Yet that is precisely what the Harkin amendment would seek to do.

The amendment also makes little sense from a tax policy standpoint. Advertising costs are like every other deduction for ordinary and necessary business expenses, and should be treated as such. Advertising deductions are not some suspect form of tax "subsidy," which should be eliminated from the Code.

Broadcasters are especially concerned, however, by the precedent that will be established by this amendment. If Congress adopts this provision, you can be certain that it soon will be faced with similar proposals to

deny deductibility for product categories like beer and wine, foods with "too much" sugar, cholesterol, or fat, or any other product that is out of favor with some special interest group.

NAB strongly opposes the Harkin amendment, and we ask you to vote against it. Congress should continue to permit full deductibility for advertising costs of all legal products.

Sincerely,

EDWARD O. FRITTS.

DISALLOWING TAX DEDUCTIONS FOR TOBACCO ADVERTISING VIOLATES THE FIRST AMENDMENT AND SETS A PRECEDENT FOR OTHER PRODUCTS

Senators Bradley and Harkin reportedly plan to propose an amendment to H.R. 11 (Revenue Act of 1992) disallowing tax deductions for tobacco product advertising and promotion expenses. Because the proposal would target tobacco product advertising and promotion uniquely and exclusively, based solely on official disapproval of its expressive content or communicative impact, the proposal would violate the First Amendment.

By eliminating the tax deductions for tobacco advertising, this amendment would effectively restrict speech on the basis of its content, thus violating the First Amendment. Just last December, the Supreme Court reaffirmed that "[a] statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech." *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board*, 112 S.Ct. 501 (1991).

Disallowing the tax deduction for advertising of tobacco products would set a dangerous precedent. If we begin to use the tax code to penalize disapproved speech or to tax speech as an instrument of social policy, there is no logical stopping point. Proposals already have been introduced in previous sessions of Congress to disallow tax deductions for beverage alcohol advertising expenses and arms-sale promotion expenses, just to name two examples. What would stop Congress from deciding next year to remove the advertising exemption from wine or beer, red meat, sugared cereals or any other product that some segment of the population disapproves of?

Restricting information does not lead to better decisions, only controlled ones. This proposal's basic flaw is that it would effectively suppress truthful speech concerning lawful products based on the paternalistic belief that the government should control the flow of commercial information.

The advertising deduction cannot be rationalized as a "subsidy." The tax system is based on the premise that only net income should be taxed, with deduction permitted for costs reasonably incurred in producing that income. The deductions for advertising expenses simply implements the net income concept. If no more provides a "subsidy" for advertising than the deduction for payroll expenses provides a "subsidy" for hiring workers.

Any effort to limit commercial speech of a legal product, whether directly or indirectly, is a challenge to the First Amendment. For this reason, previous attempts to disallow tax deductions for tobacco advertising have been opposed by groups as diverse as the American Civil Liberties Union, the Washington Legal Foundation, the Freedom to Advertise Coalition, the Association of National Advertisers and the American Association of Advertising Agencies.

AUGUST 6, 1992.

Mr. BURNS. Mr. President, we are starting down a slippery slope. If there is something we do not like, then we take it off the advertising. It has first amendment implications, and it is bad for this country whenever we start going down the road with amendments of this type.

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

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. How much time remains on our side?

The PRESIDING OFFICER. The Senator from Texas has 11 minutes remaining.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

Mr. BRADLEY. Mr. President, let us be clear about this amendment and what this amendment concerns. This amendment concerns money. This amendment concerns U.S. taxpayer dollars. This amendment concerns Federal spending to promote the consumption of tobacco; Federal spending to promote the consumption of tobacco which, if consumed, will shorten your life and increase your health care costs, increase health care costs for all of us, if you are poor or if you are elderly. And the public system incurs health care costs to take care of diseases that are caused by tobacco.

Let us make no mistake that this is about money. Every year by not collecting money that the Government is due if the provision was not in the Tax Code, every year about $1 billion goes to tobacco companies to subsidize their advertisement of tobacco products. As the distinguished Senator from Iowa has shown, these advertisements are primarily directed at the young to get them hooked on nicotine, an addictive substance, so that they will be consumers of the product for a lifetime, a lifetime that will be shorter because they have consumed the product that we subsidize through the Tax Code. That is what this amendment and debate is all about.

Free speech: This is not about free speech. This is about who the American public wants to have their tax dollars go to. There are two kinds of spending. One is to appropriate the money, giving this money to this group or that group, as we appropriate money—not much—in order to convince people not to smoke.

The other way that we spend money is by refraining to collect tax, through deductions, tax credits and exclusions if they do a certain activity, in this case, advertise tobacco. This is pure and simple an economic benefit that is conferred on a small segment of taxpayers. This economic benefit annually is worth $1 billion. This amendment does not attempt to eliminate that benefit. It only attempts to reduce it; to reduce it by $45 million in 1 year, then increasing to $120 million, $145 million, $170 million, finally to $200 million; Over 5 years, a $680 million reduction of a benefit that over that time is worth $5 billion.

This is a modest amendment. But at least we will finally have a vote in the U.S. Senate as to who wants to have taxpayer dollars go to tobacco companies so that they can advertise to the young to get them hooked on tobacco so they would be lifetime consumers, a shorter life but a good consumer. That is what this vote is about. It is about money.

Imagine how you might defend in a town meeting the question: Senator, why did you vote to give tobacco companies $1 billion? Or, Senator, why did you vote not to take away a small portion of that benefit? Did you vote not to take it away because you represent a State in which tobacco is grown? That is a position that I think I can understand and that any Senator who tries to represent his State can understand. It is quite understandable to me why Senators from States that produce tobacco would defend their State's industry, but in States where there is no tobacco grown, how will you defend this vote?

And there is now going to be a vote. How will you defend the vote not to take a little bit away from taxpayers' subsidized tobacco advertising? Will you assert that tobacco is good and that you would like to support it with the taxpayers' money? How could you assert that? That is an argument for a shorter life. Will you assert that you think it is good that high school students respond to the big camel ad and want to be like the camel in the ad? Would you defend the advertising targeted at certain communities? African-American communities? Latino communities? Poor, white communities? Will you defend the ads that are targeted to those communities? Will you defend the ads that are targeted to individuals to get them hooked on a lifetime of consumption of addictive nicotine? How can you defend that?

How can a U.S. Senator defend that in a town meeting in a nontobacco growing State? It seems to me it is going to be pretty difficult to defend. But in a few minutes, we are going to have a vote and that vote will list those who defended the tobacco industry and those who believe the American taxpayer deserves a break with less money being spent on tobacco advertising.

It is a pretty simple vote. It is about money.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. FORD. Mr. President, will the Senator yield me 5 minutes.

Mr. BENTSEN. Mr. President, I yield 5 minutes to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. FORD. I thank my friend. I thank the Chair.

Mr. President, I rise in opposition to the Harkin-Bradley amendment. This is just another attempt at a long list of efforts to penalize a legal product and put 96,000-plus farm families—and I underscore families—who depend upon tobacco for their livelihood in my State out of business.

But this effort goes too far. In their zeal to kill the tobacco industry and subsequently destroy the economy of my State by eliminating 135,000 jobs, 10 percent of the entire work force just in one State, the supporters of this amendment have had to resort to treading on the Constitution. In my opinion, it just will not fly.

The business deduction for tobacco advertising is hardly a taxpayer subsidy for this country. It is a legitimate business expense that the Code provides blindly to all advertising. It neither singles out a specific industry for the tax benefit nor does it deny the deduction to any industry.

The Tax Code no more subsidizes the tobacco industry than it subsidizes pornographers who may deduct allowable business expenses or physicians who perform abortions and deduct allowable expenses as part of their business practice, nor toxic waste producers who incur legitimate business expenses. The fact is tobacco is treated no better, no worse than any other industry under the Tax Code.

Comparing this amendment to the reduced deduction for meals is simply mischaracterization. When Congress reduced the deduction for business meals and entertainment in 1986, we did not reduce the meal deduction just for the automobile industry or the legal profession. It was cut across the board, for every taxpayer who takes this deduction. And there were good constitutional and just plain fairness reasons for doing it that way.

But that is not the case in this amendment. It unfairly singles out one industry and penalizes it under the Tax Code for producing a product that is legal.

You do not have to stretch your imagination too far to see exactly where this trend might go. Oh, we have seen a lot of the pictures today, but the next time it may be Frosty Flakes because it has sugar on it and it is bad for our children. What will they think of next? Your State, every State, all 50 States have tobacco distributors. There is a tax in every State. There is profit in every State. There are employees in every State. There are people who depend on this product throughout the country.

Now, you talk about being fair. You are singling out a health reason. I could go into a lot of health reasons here today and you would start deducting a lot of them. But fair is fair, fair across the board. So let us not single out one part of industry. You try to single out this industry for everything. The last time we had an argument it was going to pay for the drug program. The time before that it was something else—always out here pounding. Let us be fair. When you stop talking about the emotional issue of tobacco and apply the logic of this amendment to any other industry, it produces just such a ridiculous result.

So, Mr. President, let me say that I hope my colleagues will see this amendment for what it really is and what it could potentially become for other industries in this country: an attempt to punish a legal industry because the product they sell is unpopular with a particular group. And if this Senate can begin to pick and choose and start eliminating under the Tax Code, then we really have stretched the imagination of what I thought I was sent here to do. We are supposed to help the taxpayers. We are supposed to help the people. We are supposed to, above all, be fair. This amendment is not fair, not only to this industry but it is unfair to others that might follow behind it.

I yield the floor and the remainder of my time.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, how much time do the two sides have?

The PRESIDING OFFICER. The Senator from Texas has 6 minutes. The Senator from Iowa has 13.

Mr. BENTSEN. Thirteen minutes left to the Senator from Iowa.

I yield 3 minutes to the distinguished Senator from Idaho.

Mr. SYMMS. Mr. President, I appreciate the comments from the Senator from Kentucky. I come from a State that is not a tobacco State. In fact, large numbers of the population of my State do not believe in smoking. But the Senator from Kentucky is quite right. This is a constitutional issue. It reminds me that today Congresswoman LOWEY and I are hosting a reception in honor of those who have helped us move forward legislation to remember Thomas Payne who, after all, was the father of the first amendment of the Constitution, free speech. So what we are talking about is really imposing an unconstitutional, restrictive infringement of free speech on the rights of the tobacco industry in this country.

I oppose this amendment because it is an unconstitutional content restrictive infringement of the free speech rights of the tobacco industry. Tobacco sales are a legitimate business enterprise. The fervent desires of the industry's opponents are attempting to legislate this industry onto a black list.

This amendment would restrict the deductibility of tobacco advertising expenses. The deductibility of tobacco advertising and promotion expenses are proposed to be limited to 80 percent. This represents an unconstitutional effort to discriminate between forms of advertising based on the content of the advertisement. Tobacco company's commercial advertisements are protected under the constitution as is the rights of free speech guaranteed to antitobacco lobbying groups. In a free market, equal rights are given irrespective of political affiliation.

Ironically, many of the same advocates who are now seeking to impose a gag rule on an entire tobacco industry were among the first to rally around flag burning as a constitutionally protected form of free speech. The Supreme Court stated in the *Regan* v. *Time, Inc.* decision, "(r)egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the first amendment."

Such discrimination would be legitimate only if tobacco products are not a legitimate business venture. In fact, tobacco advertising is a legal and normal business expense, and it should be treated as such.

This amendment should be defeated on the constitutional argument alone but aside from those arguments there are also economic arguments. This amendment would put people out of work. According to the Leadership Council on Advertising Issues, the tobacco industry has a 6.1-percent share in general interest magazines, a 5.2-percent share of special interest magazines, and 3.1-percent share in newspapers. If this amendment passes, it would affect the approximately 4,130 jobs in the magazine industry. In a time of economic recession putting more people out of work is irresponsible.

Mr. President, Dr. Joseph DiFranza criticizes the "Joe Camel" ads because they claim the tobacco industry targets children. Yet, Dr. DiFranza concedes that, "When kids are compared to adults under 30 it appears that the ads appeal more to people in their 20's than in their early teens."

Furthermore, according to the Department of Health and Human Services and the Surgeon General, fewer than 1 percent of all teens smoke Camel cigarettes. These facts expose the weak arguments given for carving a hole in the first amendment.

Mr. President, the American Civil Liberties Union has stated that:

> The differential treatment of a particular commercial enterprise, based solely on disapproval of its promotional message, violates the constitution, and the proposed amendment should be rejected.

When the American Civil Liberties Union and this Senator agree on the

detrimental effects of a piece of legislation, there must be something desperately wrong with it.

Mr. President, this chamber is traveling down the slippery slope. What's next? Restricting the deductibility of advertising expenses for unhealthy products like fast cars, alcohol, doughnuts, and maybe even television. This amendment should not be adopted for the precedent it would set.

It is interesting to me that if in fact our well-intended colleagues are successful in doing this, they will do something for the tobacco companies they could never do legally behind closed doors. If for example my colleagues disallowed 100 percent of the duduction for advertising and these companies stopped advertising, what would happen to these major tobacco companies? Profits would go up like a rocket because they could cancel their massive advertising budgets. Then profits of papers and magazines would go down because they would not get tobacco advertising dollars. There would be a massive redistribution of the resources. This amendment would treat one product's advertising differently than the tax code treats the rest of our society's products.

I urge all my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Texas now retains 3 minutes, the Senator from Iowa, 13.

Mr. HARKIN. I yield myself 3 minutes.

Mr. President, responding to some of the arguments made here, first of all, about family farmers, I do not take a back seat to anyone here in support of family farmers, making sure they have a decent income.

The fact is what we are talking about is the reduction of an addictive drug. That is why I said earlier this amendment really is an antidrug-abuse amendment to try to cut down on drug abuse in America.

I daresay, if there are farmers in any State going to be hurt because of this—I rather doubt that they will be; the tobacco companies just have to absorb this in their own budgets—if they are, let us meet that obligation by providing the wherewithal for these farmers to plant alternative crops, to raise other things.

That has happened in my State over the years. It has happened in a lot of other States where farmers have had to change their one crop to another for various reasons. We ought to meet that responsibility. It would be a lot cheaper than what we are spending right now to take care of people every year that die, get sick, have lung cancer, emphysema, and everything else because of smoking.

We are spending $65 billion this year to take care of people who have smoking-related illnesses. It would be better to get these farmers off to something else, let them plant something else, let them do some other kind of entrepreneurial business, rather than growing this drug; nicotine.

Then we hear the argument made about taxes and profits, that there are a lot of companies out there selling cigarettes. They make a profit, they pay taxes. Is that really a legitimate reason to hook young people on an addictive drug simply because someone is going to make a profit and they are going to pay taxes on it? If you adhere to that argument, then let us legalize all drugs in America—let us legalize heroin, let us legalize cocaine, all of them, and tax them, and we will make money. Why do we not do that? I say, if any Senator buys that argument, let us just legalize all drugs. I do not think Senators want to do that. Of course not. That, again, is just a specious argument.

Again, I say, if you do not want to do that, the fact we are spending $65 billion a year in health care costs, that argument is against the offset on any taxes that are gained by the sale of tobacco.

Then the argument is made we might extend this to other industries. Maybe it will be sugar next or something like that next. The fact is, Mr. President, in the words of Dr. Louis Sullivan, head of the Department of Health and Human Services, as he said, tobacco is the only product which, "when used as intended, kills you." He said that in his own words. It is not true of sugar or anything else, only tobacco. That is why it is different, because it is an addictive drug. It kills people. So this does not have any resemblance to other industries whatsoever.

So, again, I wind up by saying this: You wonder why the tobacco industry advertises so much. Why do they target young people as we see in these ads? Because every year, Mr. President, 2 million smokers die or quit; every year 2 million people that smoke die or quit. They either die or they quit. So the tobacco industry has to have some new smokers. So they go after young people, because 2 million people die or quit every year. So they have to go after young people. That is what Joe Cool Camel is about. That is what these ads are about, showing young people having fun in the surf, young people dressed up nicely, young people having a good time, young people in very sexually suggestive poses. That is what it is all about. Hook these young people and get them started on smoking.

Our amendment does not seek to stop this. All it says is let us quit having the taxpayers subsidize it.

Mr. President, I reserve the remainder of my time. I yield 4 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 4 minutes.

Mr. BRADLEY. Mr. President, this will be a good vote. This is what is known as taking the baseline vote and then go back to the people; taking the baseline vote and then defending your vote before your constituents.

Do you want to give $1 billion a year of hard-earned taxpayer dollars to promote the consumption of tobacco, primarily among the young, primarily among the poor, primarily among the uneducated, primarily among minority groups, but also all Americans, to promote the consumption of tobacco, which will shorten your life and increase taxpayer health care costs even more down the road? When people get sick from a disease caused by tobacco, they go to the doctor and they send the bill to the Government. Who pays for that? The taxpayers do. When the Government subsidizes the advertising of tobacco to hook young people on it, who pays for that? The taxpayers do.

This is not an issue of free speech. This is an issue about who gets the money.

Mr. President, about 500,000 people die each year from diseases related to tobacco. Smoking causes more premature deaths than fire, alcohol, automobile accidents, homicide, and suicide combined. Yet, we seem to persist in wanting to get more people to smoke or use tobacco. This is one of these events that is pretty hard to explain.

When you go home to your constituents after this vote and you are asked, "Why did you vote to continue giving my tax, my dollars to one industry to hook my children on a drug that will shorten their lives?" What are you going to say? I do not think that any Senator has ever had to answer that question because there has never been a clear-cut vote. Now there is a clear-cut vote.

Mr. President, I think the distinguished Senator from Iowa has addressed the question of small farmers, the slippery slope arguments. You know: Once we do this, we are going to be denying deductions for this, that, the other thing. No. This is—well, let me take that back. I guess you could demonstrate that if a particular tax subsidy, a particular spending of taxpayer dollars promoted the death of 500,000 people a year, yes, I guess I would be back to say that is not a good idea. But for today, I am happy to make the argument that this subsidy is outrageous, that this subsidy has never been confronted in the U.S. Senate. It is going to be confronted today, and it will be confronted in State after State. The reason it will be is because it is an unwise use of taxpayer dollars. It is a subsidy to a narrow industry for a narrow purpose that benefits very few people to the health detriment of millions.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Texas now has 3 minutes, the Senator from Iowa has 5 minutes. Who

yields time? Time is charged against both sides.

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. The Senator from Iowa has 5 minutes, the Senator from Texas has 3 minutes.

Mr. HARKIN. Mr. President, I yield myself 30 seconds to respond to a couple of comments that were made.

The Senator from New Jersey is right. You really have to ask yourself some basic questions. Are you for increasing health care, for increasing productivity? Are you for protecting our children, for reducing waste in Government spending? Then you ought to support this amendment and vote against the motion to table. Or, if you are for a $1 billion tax giveaway, if you are for hooking more kids on tobacco, if you are for losing more lives, you maybe want to vote to table this amendment.

Mr. President, that is what this thing is all about. It is about saving lives and saving money. It is about trying to do away with the kind of advertising that appeals to young people and to minorities, to the poor, to get them hooked on tobacco. That is what this amendment is all about.

Mr. BENTSEN. Mr. President, we are prepared to yield back the remainder of our time, if the Senator from Iowa is.

Mr. HARKIN. Mr. President, I yield a minute to the Senator from New Jersey.

Mr. BRADLEY. I thank the distinguished Senator. I think the amendment in question has two parts: One is to remove the subsidy, and the other is to use the money to get out the message in every State in this Union that tobacco use shortens your lives.

There is a double aspect of this amendment to, first, remove the taxpayer subsidy partially. There will be fewer taxpayer dollars going to tobacco companies. Second, it takes that money and it uses it in every State through communication programs that will try to convince people that smoking is dangerous for you health.

Mr. HARKIN. Mr. President, I will yield my time soon, but I have a personal letter from Mr. Thomas Graham here that I received in August, which I want to read, which I think kind of brings it all home. I do not know Thomas Graham from Ocean City, NJ. This letter is dated August 7, 1992, in his own handwriting:

DEAR SIR: I read with interest that you are sponsoring a bill to limit tax deductions for cigarette advertising.

Enclosed is what I feel is a glaring example of the lengths they go to. I received this almost a year ago and have been waiting for the proper use for it to show up. I feel your proposed bill is that use, so I am giving it to you.

I smoked at least a pack a day of nonfiltered cigarettes for over 30 years, and in 1988 I had a heart attack, which my doctor blames on smoking. I have not smoked at all since the heart attack and didn't appreciate receiving this last year.

Hopefully, you can use it to help pass your bill and perhaps save a life.

Very truly yours,

THOMAS GRAHAM.

This is what he received in the mail, what he sent me. It is a box that looks like an old shipper's trunk, a steamship trunk. It says Manila on it, "A present from the past." And you open up this very nice box. Look how great this looks. Look how they packaged five packages of Commander cigarettes that they sent to him after he had been smoking 30 years and had a heart attack. A little booklet says, "From a time when taste was everything." You open it up and there is a nice advertisement with "sharing Commander nonfilters with friends who smoke. If you know other smokers who might enjoy receiving this, mail this in, and we will send them a Commander sampler also."

Look at that. How much do you suppose that costs to send out to that one individual, who already had a heart attack?

What he is saying is, enough of this nonsense. That is what I say, too, Mr. President. Enough of this nonsense that taxpayers have to subsidize this.

Mr. LAUTENBERG. Mr. President, I rise in strong support of the Harkin amendment. Senator HARKIN and I have worked together to try to discourage tobacco use and protect people from deadly secondhand smoke. Just last week, the Senate approved an amendment that I offered to the Labor-HHS appropriations bill to protect children from secondhand smoke. We all know that tobacco is deadly both for those who use it and for those who are exposed to it.

Mr. President, the tax bill that is pending before us is designed to provide a variety of incentives to individuals and business to invest in our cities and to revitalize our economy. The Finance Committee has approved such provisions because these types of investments will have a positive effect on our economy. There are many other incentives in the Tax Code designed to encourage certain economic and social goals.

This amendment seeks to remove one incentive that, instead of encouraging something positive, encourages sickness and death. The Tax Code provides 100-percent deductibility for advertising of tobacco products which cause death for not only those who smoke but for those who breathe secondhand tobacco smoke.

Mr. President, our Tax Code is promoting consumption of tobacco products at the same time that the Secretary of Health and Human Services and the Surgeon General are telling us that smoking is hazardous to our health. This is outrageously hypocritical!

Mr. President, this is not a small loophole in the tax law that is rarely utilized. The tobacco industry is taking great advantage of this full deduction. In 1989, the tobacco industry spent $3.6 billion on advertising and promotion. This is almost a 100-percent increase in these expenditures since 1980, and this is adjusted for inflation.

The tobacco industry spent almost $2 billion in 1989 on promotional activities, couponing and retail value added. Promotional activities include amounts paid to retailers for shelf space, cooperative advertising and trade promotions to wholesalers. Couponing and retail value added activities include cents-off coupons, multiple pack promotions, and noncigarette items such as lighters.

In addition to these expenditures the tobacco industry spent $380 million on magazine advertising in 1989 which is a 7-percent increase over the previous year. The industry also spent $385 million for outdoor advertising, which is up 12 percent from 1988.

Mr. President, why is the tobacco industry increasing its advertising and promotional activities? The answer is because advertising can help sway people to take up this life-threatening habit. Because public awareness about the dangers of tobacco products is increasing, the industry has stepped up its efforts to encourage more and more people to begin smoking.

While I am extremely disturbed by increased tobacco advertising, I am outraged by the tobacco industry's subliminal effort to make smoking appear attractive to children. Nothing is more illustrative of this practice than the image of Joe Camel which is used to promote Camel cigarettes.

Mr. President, according to research published in the Journal of the American Medical Association [JAMA] last year, the image of Joe Camel is as recognizable to 6-year-old children as Mickey Mouse. Another study published in the same edition of JAMA concluded that while 94 percent of all high school students could identify Joe Camel, only 58 percent of those over the age of 21 knew the character.

While we can only speculate about the intentions of those who promote Camel cigarettes, it is clear what the effect is. The effect is that young people are responding to this cigarette advertising.

Even Secretary of Health and Human Services Sullivan condemned advertising which targets specific groups such as youth, women, and minorities. In October 1991, Secretary Sullivan stated that "Cartoon figures can't hide the truth: Smoking is the No. 1 preventable cause of death in America."

Is the Joe Camel campaign working? The JAMA studies show that Camel cigarettes are now smoked by 33 percent of smokers under the age of 18, compared with less than 1 percent before the Joe Camel advertising campaign began in 1988. This study shows

that advertising campaigns geared to children pay off for the tobacco industry.

While the tobacco industry may have the right to run these ads, should the policy of the U.S. Government to fully subsidize the costs of such campaigns through tax deductions? I believe that we should not.

This amendment does not take away the entire deduction for tobacco advertising. This amendment only reduces the deduction from 100 percent to 80 percent, the same level of deductibility for business meals and entertainment. Given the fact that tobacco kills 434,000 people each year, I think this amendment is a rather modest one.

Now opponents of this amendment will argue that this amendment violates freedom of speech issue or curtails interstate commerce. I disagree. Promotion and consumption of tobacco products is a public health issue. As I stated previously, the Secretary of Health and Human Services has stated that tobacco smoking is the No. 1 preventable cause of death in America.

The cost of tobacco smoking on our health care system and our economy is tremendous. The costs of treating tobacco-related illnesses is $65 billion a year or $260 for every American. We simply cannot afford to subsidize the promotion of tobacco products that end up costing all of us in increased health expenditures and lost productivity.

Mr. President, every day 3,000 children begin smoking and more than 50 percent of all smokers are addicted by the age of 14. We need to reverse this tragic trend. We need to slow down the advertising machine of the tobacco industry that is enticing our children to smoke. The Harkin amendment is a first step in this direction. I urge my colleagues to support this amendment and remove some of the taxpayer subsidy of this deadly advertising and promotion game.

Mr. KOHL. Mr. President, I rise to reluctantly but firmly oppose the Harkin amendment. The reluctance springs from the fact that I do not necessarily oppose the ultimate goals of the amendment. But Mr. President, the method used to achieve those goals—as desirable as they may be—is simply unacceptable.

The approach of the amendment is to punish a particular form of speech. If adopted, the amendment would deny certain tax deductions to commercial speech simply because it deals with smoking. We will have sanctioned the use of the Tax Code to discourage not a form of behavior but a type of speech. In the past, Congress has sometimes imposed sin taxes on particular products. That is troubling enough; but this proposal doesn't impose a tax on the use of a product, it in essence imposes a tax on speech about a product. And frankly, Mr. President, I find that very troubling.

If we accept the concept that we can punish speech used to promote a given product, I don't believe there is any logical way we can oppose the extension of that concept to other products and other ideas. Does anyone doubt, for example, that Dan Quayle would like to sue the Tax Code to punish products advertised on "Murphy Brown." After all, those revenues generated by those advertisements helps pay for what he believes is a frontal attack on family values. The same logic could apply to certain cosmetics which benefit from animal testing which some groups oppose. And what about advertising which, in the view of some, insults women by using them simply as sex objects to sell a product. There is, I fear, no logical dividing line that can be drawn to prevent the unfair tax treatment being proposed in this amendment from also applying to other products and ideas which someone thinks are dangerous or undesirable.

Mr. President, I think the authors of this amendment have the best of intentions. But the approach they have used, this indirect tax on a form of speech, is simply not acceptable. In my view, this ought not be a vote about whether or not one supports smoking—it is a vote about whether or not one supports the constitutional protection which prevents Government from punishing certain forms of speech.

Mr. MACK. Mr. President, I must reluctantly oppose the amendment offered by the Senator from Iowa. As one who is actively involved in America's fight against cancer, I am keenly aware of the dangers associated with tobacco use. Studies indicate that cancer associated from tobacco use is the single most avoidable form of cancer. However, I am deeply committed to the principles of less government and more freedom. This amendment violates both principles.

Our Constitution guarantees the right to freedom of speech. This also means the Senate cannot single out one particular form of speech it deems inappropriate and attempt to suppress it due to its content. The Harkin amendment does exactly that. it targets one industry and subjects it to unfair treatment under the law. On several occasions, the Supreme Court has ruled that advertising is entitled to constitutional protection. Many legal scholars believe the courts would likely find this amendment unconstitutional.

I do not believe limiting the deductibility of advertising is the best way to achieve the goal of establishing antismoking campaigns. Furthermore, it is not sound tax policy to alter our Nation's Tax Code to penalize a single industry whenever society, or Congress, deems the activities of that industry to be harmful. The end result of this amendment would pose a financial burden on an advertiser because of the content of its advertisements.

I am also concerned that passage of this amendment would set a dangerous precedent for similar actions to limit the deductibility of advertisements for beer and wine, high-fat foods, or any product which is packaged in styrofoam. The Tax Code should not be used to punish a legal industry. It simply must not happen in America.

I have worked hard throughout my public life for less government and more freedom. I must hold to this belief even when rejecting it would benefit cause to which I am personally committee—cancer prevention. I must therefore oppose the Harkin amendment.

Mr. SANFORD. Mr. President, I rise today to once again voice my strongest opposition to the amendment by the Senator from Iowa to prohibit businesses from deducting certain expenses incurred in connection with advertising that promote tobacco products.

I have spoken to this issue before. When the Senator from Iowa spoke on this issue in August I came down to raise my concerns about this amendment. I want to recap just some of my concerns and then submit a document for the record.

This amendment before us today mistakenly assumes that the advertising and promotion expense deduction is a taxpayer subsidy. It is not. It is like any other deduction for ordinary business expenses. The Tax Code permits companies to deduct ordinary and necessary expenses incurred in its business. Advertising clearly fits within that meaning.

Mr. President, if the Government gets into the business of deciding that otherwise allowable business expenses are subject to a good-bad test, we are going to have some real problems around here. If we disapprove of a particular industry, should we indirectly harm it by requiring it to pay income taxes on something other than income? Are we going to try to solve drunk driving or alcohol abuse by going after advertising or other expenses of wineries, breweries, and their distributors? Should we limit the deductibility of labor costs in targeted industries we don't like? Obviously, this is not the approach we should take.

I do want to address directly the difference between this approach and the treatment of business meals and entertainment under the 1986 tax bill. The 1986 tax bill partially disallowed deductions for all business meals and entertainment expense, not just those incurred by a particular industry. Further more, the only reason that business meal deductions and country club dues and the like are not fully deductible is that everyone realizes that those expenses are not devoted fully to business pursuits. The employee derives some personal benefit from those amenities. Advertising is clearly different.

This amendment will certainly not be budget neutral as its proponents suggest. Instead, it will reduce the overall amount spent on advertising and promotion, which will result in less Federal tax revenue. These are some of my concerns with this amendment, but perhaps the most disturbing aspect of this amendment is it's outright attack on the first amendment. I feel strongly that, however well-intentioned, this amendment is hostile to the first amendment. Burt Neuborne, former legal director of the American Civil Liberties Union, said recently that "one can hardly imagine a clearer case of content-based discrimination."

Mr. President, this amendment offends the first amendment in three respects.

At the broadest level, the amendment is hostile to speech. It treats advertising and promotion, which are protected by the first amendment, less favorably than other income-generating business activity. It is literally a tax on speech, which the Supreme Court has condemned time and time again.

Worst still, the amendment discriminates against speech by particular speakers based on the content of their speech. It singles out the advertising and promotion of a particular industry for unfavorable treatment, solely because of official disapproval of the content of that expression. Just last December, however, the Supreme Court affirmed that a "statute is presumptively inconsistent with the first amendment if it imposes a financial burden on speakers because of the content of their speech."

Finally, the amendment taxes the advertising of an industry to finance counter-advertising by its opponents. This offends the first amendment in two ways. First, it imposes a forbidden condition on speech. It says to tobacco companies: "If you advertise, the direct result will be that the Federal Government will finance your opposition." Second, it results in forced speech. It makes the tobacco companies pay for the speech of their adversaries. The Supreme Court repeatedly has held that government may not tell private parties what to say or make them use their own property to facilitate the speech of others.

The bottom line is this. The first amendment protects all speech, including commercial speech. If we believe that the antismoking message needs further amplification, and I am not convinced that it does, the first amendment requires us to find some other method for achieving that objective than the method proposed in this amendment.

Mr. President, the Senate must reject this amendment. I ask unanimous consent to include an impressive and concise letter as a part of the RECORD. I wish to submit a letter from Floyd Abrams of Cahill, Gordon & Reindel to Senator BENTSEN.

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

CAHILL GORDON & REINDEL,
New York, NY, September 17, 1992.

Hon. LLOYD BENTSEN,
Chairman, Finance Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BENTSEN: I write on behalf of the American Advertising Federation ("AAF"), a national trade association representing virtually all elements of the advertising industry, to express grave concern as to the constitutionality of a proposed amendment to H.R. 11, The Revenue Act of 1992 (Urban Aid Bill), which I am informed is scheduled to be considered on the Senate floor next week.

The proposed amendment, as I understand it, would prohibit businesses from deducting certain expenses incurred in connection with advertising that promotes tobacco use; the resulting revenue would be used to subsidize "advertising programs designed to persuade individuals . . . not to use tobacco products." Proposed Section 45(b)(1). Because such a statute would simultaneously penalize speakers based on the views they express while it compels those very speakers to subsidize the expression of views with which they differ, the proposed amendment raises First Amendment concerns of the highest magnitude. It is for this reason that similar legislation has been opposed by groups as disparate as the American Civil Liberties Union, the Washington Legal Foundation, the Freedom to Advertise Coalition, the Association of National Advertisers and The Thomas Jefferson Center for the Protection of Free Expression. By this letter, the AAF reemphasizes its opposition to the proposed legislation.

As a national trade association representing companies that advertise consumer products, advertising agencies, magazine and newspaper publishers, and other members of the advertising industry, the AAF is concerned that the target of this bill is speech itself—commercial speech, to be sure, speech about tobacco, surely—but speech nonetheless. As such, it is inherently threatening to basic First Amendment principles. The content-based punishment of cigarette advertising constitutes one likely constitutional violation; the compelled subsidization by cigarette advertisers of those who oppose any smoking by anyone is another. Considered together or independently, both elements of the proposed amendment raise the most acute constitutional concerns.

While the proposed legislation relates only to tobacco advertising, it necessarily threatens the freedom of all advertisers and all who depend upon advertising for information. What Congress does today to one form of advertising it may do tomorrow to another. For it is undeniable that the reach of First Amendment protection for cigarette advertising is the same as for any other lawfully sold product. Just as First Amendment protection for the press applies to newspapers large and small, controversial as well as bland, irresponsible as well as responsible, the rules established by the First Amendment for commercial speech are—and must be—the same for all who claim its protection. And so it follows, inexorably and inevitably, that the First Amendment does not disappear or evaporate when cigarettes are at issue—unless, that is, it could do so for the advertising of any other product. The rules must be the same for all advertising. If they were not, we would not be talking about constitutional *law* and First Amendment *law* at all. It is for that reason, and for those discussed below, that the AAF is so troubled by the proposed amendment.

The proposed amendment singles out advertisers promoting the lawful sale of tobacco and penalizes them for the views they express. Under the current version of the Internal Revenue Code, expenses incurred in connection with advertising may be deducted from income—on the theory that only net income should be taxed. The proposed amendment makes cigarette advertising uniquely expensive by reducing the generally available deduction only for "expenses relating to advertising or promoting tobacco products." Proposed Section 280I(a). The amendment penalizes one viewpoint in favor of another: when tobacco companies promote use of their brands, they are penalized with reduced business expense deductions; when others seek to deter tobacco use, they are rewarded with subsidies equal to the very deductions the tobacco companies are prevented from taking.

This is nothing but a form of content-based censorship. It may be viewed by some as beneficent, but it is no less dangerous for the good faith of its sponsors. Indeed, as the Supreme Court reiterated last winter in striking down the New York "Son of Sam" law, "[i]f there is a bedrock principle underlying the first amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Simon & Schuster* v. *N.Y. Crime Victims Board*, 112 S. Ct. 501, 509 (1991). The statute at issue there—as here—did not actually ban speech; it imposed a financial burden on speech of which a legislature disapproved. The Supreme Court concluded that such a statute was "presumptively inconsistent with the first amendment" on the ground "that the Government's ability to impose content-based burdens on speech raises the specter that the Government may effectively drive certain ideas or viewpoints from the market." 112 S. Ct. at 508. So too here.

It is no answer for proponents of this amendment to point out that tobacco advertising is commercial speech. Of course it is. But from the first recognition of the need to provide protection to commercial speech by the Supreme Court some fifteen years ago today, the Court has "reject[ed] the paternalistic assumption" that consumers will be unable to evaluate truthful, nondeceptive advertising. *Peel* v. *Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 105 (1990) (plurality opinion); *see also Linmark Associates* v. *Township of Willingboro*, 431 U.S. 85, 97 (1977). Such assumptions are prohibited because the First Amendment has already made the choice "between the dangers of suppressing information, and the dangers of its misuse if it is freely available." *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 770, (1976). While commercial speech thus receives a "different degree of protection . . . to ensure that the flow of truthful legitimate commercial information is unimpaired," 425 U.S. at 772 n.24, a statute limiting that speech cannot be sustained if it is contrary to the principle, as most recently repeated by the United States Supreme Court, "that disclosure of truthful, relevant information is more likely to make a positive contribution to decision-making than a concealment of such information." *Peel, supra*, 110 S. Ct. at 2292. This proposed statute is directly at odds with that proposition.

Indeed, at its last Term, in striking down an ordinance punishing racist speech that by its very nature constituted so-called "fighting words" which inflicted injury or tended to incite an immediate breach of the peace, the Supreme Court stressed that even as to that much disfavored speech, government must respect the constitutional prohibition on content-based restrictions. *R.A.V*, v. *City of St. Paul, Minnesota*, 60 U.S.L.W. 4667, 4669–70 (1992); *see also New York* v. *Ferber*, 458 U.S. 747, 763 (1982). At the least, the relevant lesson of that case is that in the commercial speech context, government must respect the even stronger prohibition on viewpoint discrimination.

The fact that the proposed amendment subsidizes additional speech with the revenue it creates by penalizing tobacco advertising does not cure its constitutional deficiencies. To the contrary, it raises additional constitutional concerns. It does not follow from the unexceptionable proposition that more speech is better than less that as a condition of advertising, advertisers with a particular point of view can be compelled to subsidize the messages of those who denounce them. Such a statutory scheme offends core principles embodied in the First Amendment. As Thomas Jefferson put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." I. Brant, *James Madison: The Nationalist* 354 (1948); *see also Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977). Not surprisingly, the Supreme Court has invalidated state laws that impose much the same obligations as the proposed amendment. *See Pacific Gas & Elec. Co.* v. *Public Util. Comm'n*, 475 U.S. 1 (1986); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974).

Finally, entirely aside from what predictions you may be offered about how the courts will treat the proposed amendment, it rests in the first instance with Congress to determine what level of First Amendment protection should be afforded to commercial speech. As Justice Holmes, writing for the Supreme Court, observed, "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. Ry.* v. *May*, 194 U.S. 267, 270 (1904). Your former colleague Senator Sam Ervin put it even more forcefully: "Every Congressman is bound by his oath to support the Constitution, and to determine to the best of his ability whether proposed legislation is constitutional when he casts his vote in respect to it." P. Shuck, *The Judiciary Committee* 175 (1975).

Thus, even if you conclude that the proposed amendment might be held constitutional by a majority of the current Supreme Court, I submit that you should still not enact it. Congress has a duty to apply its own constitutional calculus and enact only that legislation which it finds consistent with its own view of the Constitution. If you believe, as I would respectfully urge upon you, that this proposed amendment is inconsistent with First Amendment principles, you should oppose the proposed amendment.

Respectfully,

FLOYD ABRAMS.

Mr. DURENBERGER. Mr. President, I rise to speak in opposition to the amendment offered by the distinguished Senator from Iowa [Mr. HARKIN].

Mr. President, I want to go on record once again, as I have often in the past, as a strong opponent of cigarettes. Cigarette smoking is the leading preventable cause of death in the United States. It is directly responsible for more than 300,000 deaths each year, or more than one of every six deaths in our country.

As early as 1984, the Minnesota Coalition for a Smoke-Free Society 2000 reported that smoking caused 5,000 deaths a year, and cost at least $374 million in direct medical costs associated with tobacco-caused illnesses.

Because of the harmful nature of cigarette smoking, the Federal Government has restricted some forms of advertising. It has prohibited the advertisement of tobacco products on radio and television. The Supreme Court has upheld this restriction.

Many States and localities have also considered restrictions on the time, place and manner of cigarette advertising, particularly ads that appear to be aimed at children. I recognize, Mr. President, that the first amendment of the Constitution prevents absolute bans on advertising of legal products.

Despite my opposition to smoking, I do not think that the Tax Code is the appropriate place to impose economic sanctions. As long as the advertisements are legal, the expenses associated with them should also be deductible as legitimate business expenses.

The best way to eliminate smoking in America is to convince people, especially children, not to start smoking. It is a sad fact that the tobacco industry must recruit 4,000 to 5,000 new smokers each day to smoking in order to maintain constant levels of cigarette consumption. And I have always supported effective anitsmoking campaigns, including limitations on how these products are marketed and sold.

Mr. President, last year I joined the chairman of the Senate Labor and Human Resources Committee in introducing the Tobacco Product Education and Health Protection Act that contained many provisions to prevent young people from starting to smoke and to encourage them to stop smoking.

Thus, I think that we should be very aggressive in our efforts to limit or eliminate the scourge of smoking in our society. However, any advertising that remains permissible should be allowed the same business deductions as other products receive.

Mr. HARKIN. I yield the remainder of my time. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, may I ask the time situation?

The PRESIDING OFFICER. The Senator from Texas retains 3 minutes. The Senator from Iowa has yielded back his time.

Mr. HELMS. May I have some, if not all of the 3 minutes?

Mr. BENTSEN. Yes. I yield 3 minutes to the Senator from North Carolina.

Mr. HELMS. Mr. President, I oppose the amendment offered by the Senator from Iowa. This is just another in a series of cheap shots being taken at the tobacco farmers of this country. Beyond that, it is also a blatant violation of the first amendment.

By seeking to limit the deductibility of promotional costs associated with tobacco products, the amendment targets for unfavorable treatment a single, totally legal, commercial product. I recognize that the Senator from Iowa may have strong feelings about the use of tobacco. However, to imply that business deductions for costs associated with advertising and promotion are some kind of taxpayer-financed subsidy is just plain absurd—and I think my colleagues know it.

Mr. President, under the Harkin amendment, a business could deduct costs of promoting any product—except tobacco. Imposing a cost on promoting one product—tobacco—is a restraint of speech based on content. As Senator HEFLIN has made clear, this is something the Supreme Court recently addressed when it invalidated a New York law on the grounds that a "statute is presumptively inconsistent with the first amendment if it imposes a financial burden on speakers because of the content of their speech." *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board*, 60 USLW 4029, 4032 (1991).

In addition, the Supreme Court has determined, "the first amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 804 (1984).

Mr. President, the U.S. Congress should not tax business in the first place. But that aside, we should not start limiting deductions for advertising expenses just because a majority thinks that the legal activity being promoted is wrong. Before Senators start picking and choosing which legal products in this country are and are not politically correct—and thus deserving of equal treatment under the tax code—they might want to think about what activity in their State might be the politically correct crowd's next target.

Senators should pause and reflect on just how slippery a slope the pending amendment would put us on if it were to pass. Senators should contemplate the very real possibility that their State may be the one that suffers next.

Mr. President, I hope Senators will oppose this amendment regardless of their personal beliefs with respect to the use of tobacco. Whether one favors or opposes smoking is not the point. The point is that tobacco is a legal product.

When I first ran for the Senate in 1972, I pledged to the tobacco farmers

of North Carolina that, if elected, I would do everything in my power to protect their livelihood and their right to grow a legal product. I will continue that commitment as long a I am a Member of the U.S. Senate.

Mr. President, I have several statements of opposition to the Harkin amendment, including letters from the Association of National Advertisers and the National Association of Broadcasters. I ask unanimous consent that they be printed in the RECORD at this point.

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

ASSOCIATION OF
NATIONAL ADVERTISERS, INC.,
Washington, DC, September 14, 1992.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: Enclosed is a letter from the eminent legal expert, Professor Burt Neuborne of New York University's School of Law, which systematically analyzes Senator Harkin's amendment to H.R. 11. The Harkin amendment limits the tax deductibility of tobacco advertising. Professor Neuborne concludes that the amendment is unconstitutional and that the underlying premises of the amendment are "inconsistent with generally accepted principles of tax policy."

Our Association, which represents national advertisers who collectively account for over 80 percent of all annual regional and national advertising expenditures in this country, believe the Harkin amendment would create severely damaging precedents threatening all of our Members. We therefore hope that you will carefully consider the important points contained in the enclosed letter before casting your vote on this critical matter. We strongly urge that you defeat this ill-considered proposal.

Sincerely,

DANIEL L. JAFFE.

NATIONAL ASSOCIATION OF
BROADCASTERS,
Washington, DC, August 6, 1992.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: We understand that Senator Harkin plans to offer an amendment to H.R. 11, the Revenue Act of 1992, which would limit the business deduction for the cost of advertising tobacco products. NAB is strongly opposed to this amendment.

NAB's membership has no direct stake in this fight. Beginning in 1971, the federal government banned advertising of cigarettes and other tobacco products on the electronic media. While the amendment clearly is designed to eliminate or reduce tobacco advertising, local radio and television stations and the networks will not lose advertising revenues as a result.

We fully share the concerns of the many advertising and media groups that oppose this amendment because it is contrary to the First Amendment, and is bad tax policy, as well. The unique danger for radio and television stations throughout the nation, however, is that this amendment would set a clear precedent by which the government will seek to single out other disfavored product categories for similar discrimination in the tax code.

We believe the First Amendment clearly forbids the government from singling out any form of speech and suppressing it because of its content. Yet that is precisely what the Harkin amendment would seek to do.

The amendment also makes little sense from a tax policy standpoint. Advertising costs are like every other deduction for ordinary and necessary business expenses, and should be treated as such. Advertising deductions are not some suspect form of tax "subsidy," which should be eliminated from the Code.

Broadcasters are especially concerned, however, by the precedent that will be established by this amendment. If Congress adopts this provision, you can be certain that it soon will be faced with similar proposals to deny deductibility for product categories like beer and wine, foods with "too much" sugar, cholesterol, or fat, or any other product that is out of favor with some special interest group.

NAB strongly opposes the Harkin amendment, and we ask you to vote against it. Congress should continue to permit full deductibility for advertising costs of all legal products.

Sincerely,

EDDIE FRITTS.

ADVERTISING TAX COALITION,
Washington, DC, August 6, 1992.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: We understand that Senator Harkin plans to offer an amendment to H.R. 11, The Revenue Act of 1992, to limit the business deduction for the cost of advertising tobacco products. The undersigned organizations strongly oppose this amendment. This amendment represents a fundamental attack on all advertising and on the constitutional protection for commercial speech.

If the tax code can be used to penalize those companies that advertise and sell products we don't like, it can be used as a weapon against any form of controversial speech. This amendment would invite future retaliation through the tax code against any unpopular product or cause.

A proposal to limit or deny the ordinary and necessary business deduction for advertising tobacco products singles out a specific form of speech and—because of its content—attempts to suppress it. The Supreme Court consistently has held that any government attempt to suppress protected expression because of its content is "so plainly illegitimate" as to render any law designed to achieve it automatically invalid. *City of Los Angeles v. Taxpayers for Vincent*, 104 U.S. 2118, 2128 (1984).

The deduction of the cost to advertise any product is not a tax subsidy. This deduction is the same as the deduction for any other ordinary and necessary business expense. It constitutes no more of a subsidy for tobacco products or use than the deduction that any company, including tobacco companies, can take for the salaries of their employees, the cost of lighting and heating their buildings or the operation of their cars and trucks.

We strongly urge you to vote against any amendment to limit the deductibility of advertising expenditures for tobacco products or any other products. This debate is not over the use of tobacco products or the wisdom of federal tax policy. It is a fundamental debate over the freedom of commercial speech, and we hope you will vote to uphold this important constitutional right.

Sincerely,

American Association of Advertising Agencies.
American Advertising Federation.
Association of National Advertisers.
Direct Marketing Association.
Grocery Manufacturers Association.
Magazine Publishers of America.
National Newspaper Association.
Newspaper Association of America.

Mr. HELMS. I will make the following comments: I have made an unscientific check of Senators, and I think I have talked to 30 or 40 of them in the last 2 hours. I asked them point blank: Is the Harkin amendment constitutional? I am not a Supreme Court Justice and do not pretend to be one. But, Mr. President, there has not been one Senator to say that it is constitutional. Most of them laughed at the suggestion that it is constitutional. WENDELL FORD put his finger on what it would do to the tobacco farmers. I have the same situation in my State. Senator HEFLIN has already discussed and made clear that this is something that the Supreme Court recently addressed—this, being the Harkin amendment.

The Supreme Court invalidated a New York law on the grounds that a statute "is presumptively inconsistent with the first amendment if it imposes a financial burden on speakers because of the content of their speech."

Mr. President, the point is this: Whether one favors or opposes smoking is not the point. Nobody in my family smokes. I used to, but I do not anymore. The point is that tobacco is a legal product, and I suggest that Mr. HARKIN consider trying to make it an illegal product, in which case Brazil and Argentina and China and all of the other countries that produce tobacco would rush in and probably kiss him on the cheek, while the tobacco farmers in Kentucky, North Carolina, South Carolina, Alabama, Georgia, and so forth, go bankrupt.

There are several letters here from legal experts who say that the Harkin amendment is not constitutional. I believe they are right. I do not presume to be a Supreme Court Justice like some in this Chamber, but I think that Senator HARKIN may be well-intentioned and may be sincere, but he is sincerely wrong, Mr. President.

I yield the remainder of my time.

The PRESIDING OFFICER. The time of the Senator from Texas has expired. All time having expired, the question is on agreeing to the amendment.

Mr. FORD. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the

Senator from Tennessee [Mr. GORE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from North Carolina [Mr. SANFORD], and the Senator from Colorado [Mr. WIRTH] are necessarily absent.

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

Mr. SIMPSON. I announce that the Senator from California [Mr. SEYMOUR] is necessarily absent.

The result was announced—yeas 56, nays 38, as follows:

[Rollcall Vote No. 235 Leg.]

YEAS—56

Adams	Fowler	Nickles
Akaka	Gorton	Nunn
Bentsen	Graham	Packwood
Bond	Gramm	Pressler
Breaux	Heflin	Reid
Brown	Helms	Riegle
Bryan	Hollings	Robb
Burns	Inouye	Roth
Byrd	Johnston	Rudman
Cochran	Kassebaum	Sasser
Conrad	Kasten	Shelby
Craig	Kohl	Simon
Danforth	Levin	Simpson
DeConcini	Lott	Smith
Dixon	Mack	Symms
Dodd	McConnell	Thurmond
Dole	Mikulski	Wallop
Durenberger	Moynihan	Warner
Ford	Murkowski	

NAYS—38

Baucus	Exon	Lieberman
Biden	Garn	Lugar
Bingaman	Glenn	McCain
Bradley	Grassley	Metzenbaum
Bumpers	Harkin	Mitchell
Burdick, Jocelyn	Hatch	Pell
Chafee	Hatfield	Pryor
Coats	Jeffords	Sarbanes
Cohen	Kennedy	Specter
Cranston	Kerrey	Stevens
D'Amato	Kerry	Wellstone
Daschle	Lautenberg	Wofford
Domenici	Leahy	

NOT VOTING—6

Boren	Rockefeller	Seymour
Gore	Sanford	Wirth

So the motion to table the amendment (No. 3170) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia [Mr. WARNER] will be recognized.

The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the managers for accommodating the Senator from Virginia on an amendment which, so far as I know will be accepted.

AMENDMENT NO. 3171

(Purpose: To amend the Internal Revenue Code of 1986 to improve disclosure requirements for tax-exempt organizations)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3171.

Mr. WARNER. 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 1751, between lines 7 and 8, insert the following new section:

SEC. 8006. IMPROVED DISCLOSURE TO DONORS BY TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ADDITIONAL REQUIREMENT FOR TAX-EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any organization described in section 501(c)(3) or 501(c)(4) and any separate segregated fund described in section 527(f)(3) maintained by such organization, which is subject to the requirements of subsection (a) shall—

"(A) advise each contributor of the availability of a disclosure statement described in paragraph (3), and

"(B) shall furnish such statement upon written request to—

"(i) such contributor, or

"(ii) any potential contributor, within 30 days of such request.

"(2) EXCEPTION.—Paragraph (1) shall not apply to—

"(A) any organization described in clause (ii) or (iii) of section 170(b)(1)(A), or

"(B) any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(3) DISCLOSURE STATEMENT.—The disclosure statement described in this paragraph is a statement for the most recent taxable year for which a return under subsection (a) has been filed, which contains the information described in—

"(A) paragraphs (1), (2), and (3) of subsection (b), and

"(B) paragraphs (6) and (7) of subsection (b), but only with respect to—

"(i) the 5 highest compensated individuals of the organization for such taxable year, and

"(ii) any other individual whose total compensation and other payments from such organization for such taxable year exceeds $100,000.

"(4) PROCESSING FEES.—Any organization furnishing a disclosure statement under this subsection may require that a self-addressed, stamped envelope and a reasonable fee not to exceed $2 to cover the actual costs of copying and mailing such statement be included in the written request for such statement."

(b) PENALTY FOR FAILURE TO MEET REQUIREMENTS.—Paragraph (1) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(E) DISCLOSURE STATMENT.—In the case of a failure to comply with the requirments of section 6033(e)(1) (relating to disclosure statements provided upon request), there shall be paid by the person failing to meet such requirements $50 for each day during which such failure continues."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

Mr. WARNER. Mr. President, this amendment requires that the 501(c)3 and 501(c)4 organizations do two steps: one, inform donors or potential donors that a disclosure statement of the charity's budget can be obtained upon their request; and two, increase the amount of financial information available publicly.

The time has come, Mr. President, for more sunlight to fall on the internal operations of certain charities, charities out soliciting dollars from our constituents every day. Had this bill been law several years ago, the tragic management abuses of the United Way case might not have occurred. I repeat, our bill has two primary goals: public disclosure of more information about charities, and easing of the procedures by which donors can get this information.

This bill was originally introduced as a free-standing measure on July 2, of this year. And from that time until now, I have worked with a number of individuals and organizations that have come to discuss this proposed legislation. Almost without exception their comments have been constructive and I was pleased to incorporate and make certain revisions in this amendment accordingly.

The spirit throughout this process has been one of cooperation, not resistance from the charities.

Current law requires the filing of a disclosure statement, the Federal 990 form, administered through the Internal Revenue Service. This statement now provides information about how much of a charity's revenues go to operating costs, including executive salaries, and what percentage of its donations go to the charitable cause for which the charity was established. Our bill adds a requirement to disclose all salaries over $100,000. This form is, technically, available to the public, but only if the individual either goes to view the statement at the organization's headquarters, or, writes the IRS and requests a copy. This bill would shift responsibility onto the charity to provide that statement, upon request; and require them to inform donors or potential donors, let them know of the availability of this disclosure statement and willingness to send it to the donors at their request.

Mr. President, the American people, as a whole, are good hearted, extremely generous, and enjoy giving of their time and hard-earned money to charitable causes. That is one of the great traditions that distinguishes America from other nations in the free world. No other nation, as best I can determine, even approaches us on the concept of voluntarism and charitable giving.

There is a presumption that charities are equally good hearted and handle their donations with frugality and care. Fortunately, the vast majority do. Giving is on the road to recovery following the widespread public outcry

of dismay after the United Way problem. Confidence is being restored. But more detailed knowledge of how frugally a charity manages salaries and expenses and how much of the donor's money is left for the beneficiaries will help further strengthen people's confidence in tax-exempt giving.

The bill only focuses on the 501(c) 3 and 4 organizations due to the special tax-exempt status they enjoy. The bill exempts hospitals and educational institutions; as you may know, current law already exempts religious organizations.

Further, I have exempted organizations which gross under $100,000 per year because there are so many holding small charitable events and I do not wish at this time to place upon them these responsibilities.

Several inquiries have been received from organizations, how they are to go about notifying as required by this bill, the donors or potential donors. The bill leaves a great discretion to the organizations to decide for themselves how best to inform their potential donors or actual donors. We do not try and specify that in the bill.

We do not try to specify that in the bill. Organizations will have the flexibility to decide for themselves how their charity can best meet this requirement.

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

Mr. WARNER. Mr. President, I ask unanimous consent that I can proceed for not to exceed 3 minutes.

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

Mr. WARNER. It appears that a simple way to notify donors would be to enclose a notification along with the usual acknowledgment of the gift, or they could inform potential donors as a part of the solicitation process. The organizations have reasonable flexibility, therefore, to choose the manner in which to notify the public.

Another area of concern may be over the section which permits—and I repeat, permits—the charitable organization to charge a $2 fee as well as to require a self-addressed, stamped envelope to help defray postage and handling and processing fees. I did this very carefully because a lot of charities are on such a tight budget, I did not wish to impose on them additional expenses. So this $2 will help defray, presumably, a large part. And also, Mr. President, regrettably there are certain persons who might begin to solicit the charity information time and time again when they do not have my real serious or genuine intention to participate in giving to that charity, and that modest fee could well serve as a deterrent. Again, it is optional. The charity may or may not decide to have the fee.

There is also, understandably, concern regarding the disclosure of large salaries. The bill, however, is not a policy statement or stance on how much is or is not proper to compensate top executives in tax-exempt organizations. Let the donors decide. That is the purpose of this amendment. I am simply saying that the public helps to pay those salaries, and it has the right to know the details about the large salaries and the expenses associated with the operations of that charity.

Mr. President, I urge my colleagues to support this amendment, and I shall not at this time indicate a desire to have a rollcall vote.

I yield the floor.

Mr. PACKWOOD. Mr. President, this side has checked the amendment. We find it very acceptable and appreciate the Senator's bringing it to our attention.

Mr. BENTSEN. Mr. President, I am advised that we have no objections on this side. I think it is a good amendment, and we are pleased to accept it.

Mr. WARNER. Mr. President, I very much appreciate the statements by the managers, particularly the statement that it is a good amendment, and I am hopeful that both managers will support it in conference. For that reason then, I simply urge adoption of the amendment by voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3171) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider that vote, and I move to lay that motion on the table.

Mr. WARNER. Mr. President, I ask unanimous consent that the Senator from Ohio [Mr. METZENBAUM] be made a cosponsor.

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

Under the previous order, the Senator from Arizona is recognized.

AMENDMENT NO. 3172

(Purpose: To require a 60-vote supermajority in the Senate to pass any bill increasing taxes)

Mr. MCCAIN. Mr. President, I thank the Chair. I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 3172.

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

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

The amendment is as follows:

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

SEC. . TAX FAIRNESS AND ACCOUNTABILITY.

(a) SUPERMAJORITY REQUIREMENT IN THE SENATE.—

In the Senate, any bill or amendment increasing the tax rate, the tax base, the amount of income subject to tax; or decreasing a deduction, exclusion, exemption, or credit; or any amendment of this provision shall be considered and approved only by an affirmative vote by three-fifths of the Members of the Senate, duly chosen and sworn.

(b) AMENDMENT TO THE CONGRESSIONAL BUDGET ACT OF 1974 STRIKING 60-VOTE REQUIREMENT FOR REVENUE REDUCTION.—Section 311(a) of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following: "Notwithstanding any other provision of this Act or any other law, a bill, resolution, or amendment that reduces the tax rate, the tax base, the amount of income subject to tax; or increases a deduction, exclusion, or credit shall be considered and approved by a simple majority of the Senate; Provided however, that a bill, resolution or amendment that reduces the tax for Social Security may only be considered and approved by an affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn."

The PRESIDING OFFICER. There are 30 minutes of debate on this amendment equally divided.

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

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

The yeas and nays were ordered.

Mr. MCCAIN. I thank the Chair. I appreciate the rapt attention of my colleagues.

Mr. President, I will not spend a long time on this amendment. Just myself and the Senator from Mississippi, I believe, will be discussing it. The hour is growing late. The distinguished chairman and ranking member have already had a long day and will probably have a long evening. We have debated and discussed this particular amendment before, Mr. President, so I will try to be relatively brief.

I understand—if I can get the attention of my friend from Oregon—this will be subject to a budget point of order.

Mr. PACKWOOD. That is correct.

Mr. MCCAIN. This amendment is simple. It requires a 60-vote supermajority for tax increases while requiring only a 51-vote simple majority for tax cuts. The firewall for Social Security remains. Finally, there is a 60-vote supermajority to repeal any provision of this amendment.

The final supermajority requirement would further protect the Social Security trust fund as well as provide for a stable and sound rule for making tax policy.

Mr. President, in my view, one of the greatest economic policy mistakes—with all due respect to the dedication and hard work of the architects of the 1990 budget summit agreement, was the 1990 budget summit agreement. As a result, the deficit has exploded from $220 billion in 1990 to $268 billion in 1991, and it is expected to balloon to $330 billion this year. Remember, the promises of the budget summit agreement were that we would have reduction in the deficit and an increase in economic

growth. Tragically, we have experienced neither.

That budget summit agreement included provisions that make it easier for the Senate to raise taxes than it is to cut taxes. Is it any wonder the Senate spends so much time figuring out ways to raise taxes?

I think it is important that President Bush has admitted that breaking his "no new taxes" pledge was a mistake, and I think it is clear that we cannot tax our way to prosperity.

Tax policy should be based on the notion of limited Government, limited taxation, and free and open debate.

In a Money magazine's seventh survey of "Americans & Their Money," 80 percent of the American people were against paying taxes to lower the deficit. They know that tax increases do not reduce deficits, that only spending cuts can reduce the deficit.

I might point out, Mr. President, we have raised the American people's taxes 57 times in the last 30 years, and in only 1 of those 30 years did we balance the budget.

As we look at $4 trillion of debt, we find ourselves in the tragic situation where we have literally mortgaged the futures of America's children; a $19,000 debt for every man, woman, and child in America and there is no sign of abatement.

I would like to see by this amendment a change in the practices of this body so that it is harder to raise taxes than it is to cut taxes. That is why I would like to see my amendment adopted.

Mr. President, I do not think there is 1 American in 1,000 that knows of that provision in the 1990 budget summit agreement that only requires 51 votes in the Senate to raise their taxes and 60 votes to lower them. I would like to see it reversed. I think the majority of the American people would like to see it reversed. I am hopeful that sooner or later, we can get this onerous and frankly unfair provision of the 1990 budget summit agreement reversed.

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

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. McCAIN. Mr. President, I yield such time as the Senator from Mississippi may consume.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I thank the Chair. I want to thank the distinguished Senator from Arizona for yielding me this time and for once again having the courage to stand up and offer this amendment.

I say "courage" because I know there is a lot of pressure to move this legislation along and to not force a vote on something like this. But I think it needs to be discussed. As Members of this body, we sometimes wonder why the people are disenchanted, why they are mad at incumbents, why they are outraged. Well, it is things just like this that outrage the voters in this country. When they find out some of the incredibly inexcusable—and that is the nicest word I can use—things that we do in this body, they get outraged, and they should.

Now, most people out across America do not realize how the present law works. But if you went out to the byways and the crossroads of America and you said, "Let me explain to you a little thing that we have to deal with regarding your taxes in Washington," then you explain to them that to cut their taxes you have to have a supermajority but to raise their taxes it only takes 50 votes, they say, "Excuse me. You must have that backward." They cannot believe it. And then they figure it out: "That is one reason why you guys keep raising my taxes, because it is easier to raise taxes than it is to cut taxes."

This is not the way it has always been. This is a recent change. It was the budget agreement of 1990 that haunts us all here today and has for 2 years and will forever, I guess. That law required a supermajority to cut taxes. I say it ought to be 50 votes in either case, or, if you are going to have a supermajority one way or the other, it should take a supermajority to raise taxes.

As a matter of fact, I do not know what the numbers are, but many of the State legislatures that I am familiar with, require a supermajority to raise taxes on the taxpayers in their respective States.

So No. 1, this is part of the reason we have such problems now, I think, in this country, not only with our economy, but, as a result of that, probably with our voters in this country. No. 2, this is a recent change; and, No. 3, this is something that most States do not allow. For all of those reasons, I support this amendment.

This bill has a lot of good features, but it also has some things which I do not quite understand where they came from. We are going to phase out deductions and exemptions. We have in this bill before us a proposal to significantly increase the percentage of tax withheld on bonuses. I think that when people discover that, a lot of people that depend on bonuses are going to be outraged. You say, "Well, the people who get bonuses are people in the upper income brackets." I happen to know for sure that is not the case. There are a lot of people that depend on that bonus, in fact, to make ends meet. They do not make enough with their regular income.

Current law taxes a significant percentage of scholarship income. Here, at a time when we are supposed to be encouraging excellence in education, we have in the law provisions that tax that part of the scholarship income which pays for room and board and travel to and from school.

I do not understand that. I do not think most American people would understand that. We are trying to encourage students to do well and seek scholarships, and then we tax it. There is some basic inconsistency in our policy there. I believe we should change the tax law to exclude this scholarship income from taxation.

So, to conclude, I support this pending amendment. I urge, tonight, that we change this mistake we made in 1990. I think it is good and honorable to admit a mistake. It was a mistake to require a supermajority to cut taxes, and only 50 votes to raise taxes.

I have supported this change before. I will always support it. One of these days the American people are going to make us do this. We should have 50 actually for each, or reverse this order.

I appreciate the tough job that the leaders on this committee have to do. They cannot make any of us happy, most of the time, and it is a thankless job. I have voted with them on most of the amendments during the past couple of days because I want to help them do the job. But, in my opinion, to raise taxes we should require a supermajority. To cut taxes, just 50.

So I endorse the amendment and I urge my colleagues to vote for it.

Mr. BENTSEN. I yield 5 minutes to myself.

Mr. President, we have had this amendment before us twice already. We had it September 24, 1991, and it was defeated by a majority of 62 to 37. We had it before us on March 13, 1992, and it was defeated by a vote of 50 to 37.

Superficially, I think this has some appeal. But if you look into it in some depth what we are talking about, if we want to close the tax loophole, it is going to take you 60 votes to do it. It is going to create a tax loophole. You can go with the simple majority.

I think what you are talking about in this kind of a situation is an amendment that really just unhinges the budget process and adds to the deficit runaways that we have seen in the past. We enacted a key reform back in 1990 by establishing the pay-as-you-go principle requiring new entitlements to be matched either by revenue increases or spending cuts.

This amendment, in trying to tip the balance against taxes, actually destroys that tough discipline we added to the budget process only 2 years ago.

As a result, this amendment would send the deficit into the stratosphere by removing the current requirement for a supermajority vote to increase the deficit. This is not deficit neutral; it is prodeficit. Note carefully that this amendment has a catchall notwithstanding clause that allows a simple majority to increase the deficit by opening tax loopholes or changing the

tax base, as well as by reducing some existing taxes.

In other words, this amendment would require 60 votes to pay for expanding health care coverage, but only a majority to pass a Christmas tree full of special interest tax loopholes. Is that the way we want the system to work? I do not think so.

Maybe deficits do not matter to the sponsors of this amendment. Maybe they are not losing any sleep over the all-time record high deficits we're running. But fiscal discipline is important, now more than ever. That is why we enacted pay as you go in 1990, and why we have on the books longstanding points of order against deficit increases—points of order which can be waived only by a supermajority vote of the Senate.

As chairman of the Finance Committee, I am also concerned about stacking the deck against my committee's prerogatives and responsibilities. It is hard enough to fulfill the requirements for deficit neutral legislation. This amendment would say "loopholes are fine, but any offsetting revenues have to win 60 votes." Frankly, I am not sure how this McCain amendment would operate in practice, but it might even be construed to divide packages and allow points of order against revenue increases while leaving the reductions undisturbed.

I happen to support an extension of the R&D tax credit. So does the administration. This bill provides an extension of that tax credit. But the extension costs revenues. This amendment would let us pass that extension by majority vote, but then we would have to find 60 votes to offset those losses by alternative revenues. And if we failed to muster that supermajority, the credit would still be extended and the deficit would widen.

This proposal also poaches on another committee, the Budget Committee, by amending the Budget Act. I understand that the chairman of the Budget Committee may raise a point of order against this amendment on the grounds that it contains legislation within Budget Committee jurisdiction but has not been reported by that committee, section 306.

Mr. President, I withhold the balance of my time.

Mr. SASSER. Mr. President, will the chairman yield?

Mr. BENTSEN. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. SASSER. Mr. President, I thank the distinguished chairman of the Finance Committee for yielding to me.

Mr. President, what we see with this amendment is another ill conceived effort to carry on the disastrous fiscal policies that this country pursued during the early part of the 1980's. You will recall that in the early part of the 1980's, particularly with the enormous tax cuts of 1981, the rationale was that we are going to reduce revenues, then subsequently we are going to reduce spending, and also the reduction in revenues will put money in the taxpayers hands, and this will stimulate the economy to the extent of the revenue pie.

That was a disastrous concept. Why do I say disastrous? Because from 1981 forward the revenue policies, the fiscal policies raised the national debt from 1981 through 1989 by over 200 percent.

The tax cuts that were enacted in 1981 deprive the Federal Treasury, according to the Office of Management and Budget of the Reagan administration, between 1981 and 1989, of $1.8 trillion in revenues.

There seems to be a psychology abroad with some in this country that you can promise everything, that you can vote for all of the expansions, but somehow there should not be revenues to pay for it.

If this amendment should become law, we will be right back in the boat we were during 1981, in a situation where we cut taxes first—that is the easy part—and then we are going to follow that up later with the spending reductions that never came. There were not adequate spending reductions to make up for the loss of revenue. That is not an accident, because the American people were demanding the programs and the services that the Federal Government had afforded, and there was not the political will—and understandably so—to come and make the revenue cuts that might have been necessary.

In this particular situation, in the event the Federal Government should find itself in need of additional revenue, trying to overcome the supermajority hurdle would simply be almost impossible to do. During the budget negotiations 1990, there was recognition on the part of the administration and the leadership of Congress that in an effort to stop the hemorrhage of red ink, in an effort to try to bring our budget more into balance, both the President and the leadership of the Congress would support some very moderate revenue increases, along with some spending cuts.

Mr. President, if in that instance we had been able to make some spending cuts with a simple majority, and if it would have required a supermajority to make the very modest and moderate revenue increases that were attendant to that particular agreement, then the revenue increases simply would never have occurred, and we would have been stuck with additional or enlargement of the deficit itself.

So, Mr. President, this amendment is simply unwise public policy. From a public policy standpoint, it would simply be, I think, unwise and impractical for us to move in the direction of a supermajority, as opposed to a simple majority for creating revenues.

Mr. President, I yield the floor.

Mr. BENTSEN. How much time is remaining?

The PRESIDING OFFICER. Four minutes, forty seconds.

Mr. BENTSEN. I yield to the Senator from Oregon.

Mr. PACKWOOD. Mr. Speaker, I am going to oppose this amendment, although I understand the intentions of those who offer it. I can sympathize in some respects in this sense: There is no question but what has happened in this Nation over the last 40 years. Taxes have gone up, and spending has gone up. We have not narrowed the deficit.

Forty years ago, all of the governments in the United States—Federal, State, local, water districts, and what not—all collectively taxed about 20 percent of the gross national product. We spent about 22 percent of the gross national product. So we had a deficit, all of the governments added together. Forty years later, we are now taxing about 33 percent of the gross national product, and we are spending about 35 or 36 percent of it.

Taxes have gone up tremendously. Spending has gone up tremendously, and the deficit remains. One day, I would like to think that the issue we would debate in this country is not incremental spending or incremental taxing; but in 10, 20, 30 years from now, do we want to look like Denmark or Sweden and tax 45 or 50 percent of the gross national product, and spend 50 or 55 percent of it, still having deficits? Because that is the inexorable way we are heading with the policies we have been following, and I think we will continue to head that way until we get a balanced budget amendment that compels us to balance the budget, which I do support and have supported strongly.

I would be willing to support a change in the rules so we would either have simple majorities or supermajorities for both spending and taxes. But I find the approach of my good friend from Arizona wrong.

I am going to join very strongly with the chairman of the Budget Committee and the chairman of the Finance Committee in opposition to this. But I say that I sympathize with their senses and their feeling. The evidence in the past as to what happens whenever we get taxes is quite simple: We spend it. We spend it on new programs and on programs that Congress loves. We spend it on programs the President loves. We spend it on programs we collectively all love. But we spend it.

And at some stage we will stifle the economy of this country with that approach. So I welcome that debate again at an appropriate time. I wish this Congress would pass a constitutional

amendment to balance the budget. We have had that battle, and we are not going to do that, and it is a sad day.

I yield the remainder of my time.

The PRESIDING OFFICER (Mr. SASSER). Who yields time?

The Senator from Arizona has 6 minutes.

Mr. MCCAIN. Mr. President, I do not intend to take too much more time. The chairman mentioned that we have voted on this before, and I am reluctant to waste the time of this body, particularly this late in our session.

I point out that this is a new phenomenon. It is not normal, nor is it customary for this body to have a provision that requires 60 votes to lower taxes and 51 to raise them. It is only a result of the 1990 budget summit agreement.

I agree with my friend from Oregon, who said that every time we raise taxes, we only spend the money. I think that is clear; 57 times in the last 30 years, we have raised the American people's taxes, and each time we have not reduced the deficit. In fact, our debt has grown to $4 trillion, of which the enormity is hard even for financial experts to comprehend.

At the same time, I think we have to keep this issue before the American people, and this is a way that I can do that. That is why I agreed to such a short time agreement, because the issue has been debated. But I think that provision of the 1990 budget deal is bad. I think it is bad for the American people, and I think it has increased their tax burden under which they are barely surviving. I think that the amount of taxation that the American people are suffering under is the direct cause of the economic stagnation we have been experiencing.

I am prepared to yield the remainder of my time for the distinguished chairman to make a budget point of order.

Mr. HATCH. Mr. President, I rise today to join Senator MCCAIN in urging our colleagues to support the tax fairness and accountability amendment.

Mr. President, today we are discussing a bill to provide relief to the urban areas of our country, stimulate our economy, and provide the taxpayers of this country some relief from a complex and burdensome Tax Code. Although this country is slowly recovering from the recession, our citizens still need our help.

During this period of need, the ability of this legislative body to do something to help is hampered by the Budget Enforcement Act of 1990, which requires 50 votes in the Senate to pass any revenue-cutting legislation. This requirement ties the hands of Congress in doing what needs to the done—pass legislation designed to spur the economy and provide relief to our citizens.

This problem is made worse by the static scoring system utilized in Congress today. This method of scoring often categorizes a bill as losing revenue when, in the real world, it would raise revenue through increased economic activity. For example, a commentary by Warren Brookes printed in the Washington Times on February 25, 1991, discusses the effects of the Wallop-DeLay growth package. This package was scored as a revenue loser, losing $32 billion by the year 1995. Thus, the bill would require 60 votes to pass in the Senate. The article shows that when using a dynamic approach to scoring, this proposal would actually increase revenues by $34 billion, add 1.633 million jobs, and contribute $228 billion to the GNP by the year 1995. We cannot ignore the relationship that tax legislation would have on our dynamic economy.

By reversing this bias from one that focuses on tax-raising provisions to one that emphasizes tax cuts, we are making it possible for the Senate to take an aggressive role in controlling the recession. Controlling the level of taxation is a prudent budgetary tool. Economic activity is increased under lower levels of taxation. This increases total revenue and will help us out of the recession. On the other side of the question, by making it more difficult to raise the level of taxes, we are utilizing a proven tool to combat recession.

Let us allow Congress to become a driving force in combating the recession by taking the first step toward controlling the spiraling budget deficit and the recession. Let us help all of the workers in America, both the employed and unemployed. I strongly urge my colleagues to support this amendment.

Mr. DURENBERGER. Mr. President, I want to take a few moments to speak in opposition to the amendment offered by my distinguished colleague from Arizona [Mr. MCCAIN].

Mr. President, the Senator from Arizona is proposing that the Constitution be further amended to preclude raising revenues and taxes above the annual growth in national income unless such a revenue proposal garners the support of a supermajority, three-fifths of Senators and Representatives. On the other hand, all it would take is a simple majority of 51 Senators and 218 Members of the House to approve any tax cut.

Mr. President, at a time when the Federal budget deficit is $400 billion; when the national debt is $3.8 trillion and growing at the rate of more than $1 billion a day, I cannot understand the rationale for this amendment unless the Senator is intent on seeing the Federal deficit rise to $500 or $600 billion.

When we adopted the pay-as-you-go budget agreement, we established a rule providing that if a legislative proposal loses revenue, and thereby increases the deficit, the Senate must come up with sufficient offsetting revenue to pay for that proposal. If there is no offset, a revenue-losing legislative proposal can be enacted, but only if 60 Senators agree to waive the Budget Act. That is the discipline that prevents this body from further increasing the deficit.

What the pending amendment would do, is turn the budget agreement upside down. It would allow a simple majority of 51 Senators to pass legislation cutting taxes no matter the extent the budget deficit is increased. But it would require a supermajority of 60 votes to pass fiscally responsible legislation that might require a modest tax increase to pay for an emergency program and help reduce the deficit.

Mr. President, how did we get to this point today where our Nation is the largest debtor in the world? We got here because we spent the last decade expanding entitlement and domestic spending without having the will to pay for them with tax revenue. Every interest group that knocked on our door with their needs got something. And since we didn't have the will to say no to spending increases, the national debt has grown to $3.8 trillion, and interest on the debt has jumped more than 400 percent from $52.5 billion in 1980 to more than $215 billion this year.

Mr. President, it is the rare elected official who wants to go back home and tell his constituents that taxes have to be raised to pay for spending. All of us prefer to promise lower taxes. Yet that is precisely why we face this extraordinary national debt.

The proposal before us will make it far more difficult for the Senate to adopt fiscally responsible tax legislation, while significantly diminishing our ability to control the deficit. Is that the legacy we want to leave to our children. More debt, more tax cuts, fiscally irresponsibility.

Mr. President, this amendment fundamentally alters the rationale and logic of the budget agreement. If we vote this amendment, we are telling the American people that on our watch, we threw away any sense of fiscal discipline.

I urge my colleagues to oppose this amendment.

Mr. BENTSEN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 1 minute, 23 seconds.

Mr. SASSER. Mr. President, I am prepared to make the point of order, if all time is yielded back.

Mr. MCCAIN. Mr. President, I yield my time.

Mr. SASSER. Mr. President, I raise a point of order that the pending McCain amendment violates section 306 of the Congressional Budget Act of 1974.

Mr. MCCAIN. Mr. President, I move to waive section 306 of the Budget Act, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second.

There is a sufficient second.

The question is on the motion to waive the Budget Act.

The clerk will call the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Tennessee [Mr. GORE], the Senator from North Carolina [Mr. SANFORD], and the Senator from Colorado [Mr. WIRTH] are necessarily absent.

Mr. DOLE. I announce that the Senator from North Carolina [Mr. HELMS], the Senator from New Hampshire [Mr. RUDMAN], the Senator from California [Mr. SEYMOUR], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

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

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

The yeas and nays resulted—yeas 32, nays 60, as follows:

[Rollcall Vote No. 236 Leg.]

YEAS—32

Bond	Gramm	Nickles
Brown	Grassley	Pressler
Burns	Hatch	Roth
Coats	Hollings	Shelby
Cochran	Kasten	Smith
Cohen	Lott	Stevens
Craig	Lugar	Symms
D'Amato	Mack	Thurmond
Dole	McCain	Wallop
Garn	McConnell	Warner
Gorton	Murkowski	

NAYS—60

Adams	Domenici	Levin
Akaka	Durenberger	Lieberman
Baucus	Exon	Metzenbaum
Bentsen	Ford	Mikulski
Biden	Fowler	Mitchell
Bingaman	Glenn	Moynihan
Bradley	Graham	Nunn
Breaux	Harkin	Packwood
Bryan	Hatfield	Pell
Bumpers	Heflin	Pryor
Burdick, Jocelyn	Inouye	Reid
Byrd	Jeffords	Riegle
Chafee	Johnston	Robb
Conrad	Kassebaum	Rockefeller
Cranston	Kennedy	Sarbanes
Danforth	Kerrey	Sasser
Daschle	Kerry	Simon
DeConcini	Kohl	Specter
Dixon	Lautenberg	Wellstone
Dodd	Leahy	Wofford

NOT VOTING—8

Boren	Rudman	Simpson
Gore	Sanford	Wirth
Helms	Seymour	

The PRESIDING OFFICER. On this vote, the yeas are 32, the nays are 60. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Chair further rules that the amendment contains provisions within the Budget Committee's jurisdiction and the bill was not reported or discharged from the Budget Committee and therefore violates section 306 of the Congressional Budget Act. The point of order is sustained and the amendment falls.

SENATE COMMENDS VINCE DEL BALZO

Mr. MITCHELL. Mr. President, may I have order in the Senate, please?

Mr. President, for all Senators and for Americans who watch the proceedings in the Senate on television, the best known voice is that of the clerk who calls the roll during votes. Today, Vince del Balzo is retiring after 20 years of service in the Senate. In 1970, at the age of 17, Vince began work here in the Senate for Senator Mike Mansfield. In September 1977, he worked in the Secretary of the Senate's office. He then worked in the Executive Clerk's Office, and in 1980 he was appointed bill clerk.

Vince's family has a distinguished history of working on Capitol Hill. His mother was personal secretary for Senator Mansfield; his father worked in the House Journal Clerk's office.

Vince has just completed his work on his master's degree in social work and will soon begin working as a therapist with children in Maryland.

No Senator will be heard to say what we are all thinking, regarding his forthcoming work as a therapist with children. But we do wish him the very best of success in his new vocation and thank him for his years of dedicated service to the Senate.

Mr. DOLE. Mr. President, I want to join my friend, the majority leader, Senator MITCHELL, in expressing our thanks on this side of the aisle to Vince Del Balzo. He always gets it right—as far as I know, he always gets it right. But he has been courteous, patient. It takes a lot of that around this place.

So we wish him luck in his new endeavors. I know the children of Maryland are going to be beneficiaries of his wisdom and his hard work.

And I certainly, for every Member on this side of the aisle and for every Member in this body, want to congratulate you on a job well done.

Mr. MITCHELL. Mr. President, would our colleagues join me in a round of applause for Vince Del Balzo.

[Applause, Senators rising.]

TAX ENTERPRISE ZONES ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Washington is recognized.

AMENDMENT NO. 3173

(Purpose: To amend the Internal Revenue Code of 1986 to deny the benefits of certain export subsidies in the case of exports of certain unprocessed timber, and to establish rural development programs for certain rural communities and small businesses that have been adversely affected by a declining timber supply and changes in the timber industry in the Pacific Northwest)

Mr. ADAMS. 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 Washington [Mr. ADAMS] proposes an amendment numbered 3173.

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

Mr. PACKWOOD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will read the amendment.

The assistant legislative clerk continued reading the amendment.

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

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ADAMS. Mr. President, parliamentary inquiry? I have a parliamentary inquiry of the Chair.

Is it in order, during the reading of the amendment, without it being dispensed with, for the floor leader and the opponent of the amendment to have a discussion?

The PRESIDING OFFICER. The regular order, as the Chair is advised by the Parliamentarian, is that the amendment is to be read because objection has been heard to the unanimous-consent request.

The clerk will read the amendment.

The assistant legislative clerk continued reading the amendment.

Mr. ADAMS. Mr. President, I ask permission to withdraw the amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment.

Mr. ADAMS. I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 3173) was withdrawn.

The text of the amendment (No. 3173) is as follows:

At the end of title VIII, insert the following new sections:

SEC. 8217. DENIAL OF CERTAIN EXPORT SUBSIDIES.

(a) FOREIGN SALES CORPORATIONS.—Paragraph (2) of section 927(a) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end thereof the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(b) DOMESTIC INTERNATIONAL SALES CORPORATIONS.—Paragraph (2) of section 993(c) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding after subparagraph (D) the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(c) TITLE-PASSAGE RULE.—Subsection (b) of section 865 (relating to source rules for personal property sales) is amended by adding at the end the following:

"Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

(d) ELIMINATION OF DEFERRAL.—Subsection (d) of section 954 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) the sale of any unprocessed timber referred to in section 865(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

SEC. 8218. RURAL DEVELOPMENT IN RURAL COMMUNITIES.

(a) PURPOSES.—The purposes of this section are—

(1) to create an organizational structure to plan rural development programs for economic diversification, stability, and rural development for rural communities that have been adversely affected by a declining timber supply and changes in the timber industry in Oregon, Washington, and northern California; and

(2) to provide rural development programs for small businesses and microbusinesses adversely affected by changes in the timber industry.

(b) DEFINITIONS.—As used in this section:

(1) ADVERSELY AFFECTED.—The term "adversely affected", with respect to a community or a business situated near or adjacent to a Federal forest, means adversely economically affected by changes in the timber industry.

(2) AFFECTED STATE.—The term "affected State" means Oregon, Washington, or California.

(3) COMMISSION.—The term "Commission" means a Community Rural Development Commission established by subsection (d).

(4) COMMUNITY.—The term "community" means a rural community that—

(A) is adjacent to or near a Federal forest; and

(B) has been adversely affected.

(5) DISLOCATED WORKER.—The term "dislocated worker"—

(A) means an individual—

(i) who is employed, or who was employed, in the timber harvesting, log hauling and transportation, saw mill, or secondary manufacturing of wood products industries that are dependent on timber from Federal forests in Oregon, Washington, or northern California;

(ii) who is experiencing dislocation from the individual's employing industry; and

(iii) who has exhausted unemployment benefits available under State law; and

(B) does not include an individual who is engaged in an occupation that is not directly related to the timber harvesting or wood products industries.

(6) DISLOCATION.—The term "dislocation" means a dislocated worker's total or partial loss of employment (including being compelled to accept a position with lesser pay or to work part-time) during the period beginning 2 years before, and ending 3 years after, the date of enactment of this Act because of an action that is taken pursuant to—

(A) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

(B) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); or

(C) the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).

(7) EMPLOYMENT.—The term "employment" means the worker's period of employment in the timber harvesting, log hauling and transportation, saw mill, or secondary manufacturing of wood products industries in Oregon, Washington, or northern California in each of the 3 base periods (as determined under State law) preceding the total or partial dislocation that constitutes—

(A) at least 39 weeks of employment (at 20 hours or more of employment per week); or

(B) not fewer than 1560 hours of employment, as determined under the unemployment laws of the worker's State of residence.

(8) FEDERAL FOREST.—The term "Federal forest" means land in Federal ownership that is managed—

(A) by the Forest Service and is located—

(i) within the exterior boundaries of a national forest in the State of Washington or the State of Oregon; or

(ii) in one of the following national forests (or portions of forests) in the State of California: Siskiyou, Rogue River, Klamath, Six Rivers, Shasta-Trinity, and Mendocino National Forests, or that portion of the Modoc National Forest inhabited by northern spotted owls; or

(B) by the Bureau of Land Management and is located in—

(i) the State of Washington;

(ii) the State of Oregon; or

(iii) the Ukiah District in the State of California.

(9) FUND.—The term "Fund" means the Community Rural Development Investment Fund established by subsection (c).

(10) STATE LAW.—The term "State law" means the unemployment compensation laws of the worker's State of residence.

(c) COMMUNITY RURAL DEVELOPMENT INVESTMENT FUND.—

(1) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Community Rural Development Investment Fund", consisting of such amounts as are transferred to the Fund under paragraph (2).

(2) TRANSFERS TO FUND.—For each of fiscal years 1993 through 1998, the Secretary of the Treasury shall transfer to the Fund by not later than the last day of the fiscal year an amount equal to 40 percent of the increase in Federal revenues for the fiscal year by reason of the amendments made by section 8217.

(3) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—On October 1, 1993, and each October 1 thereafter through October 1, 1998, and without further appropriation, the Secretary of the Treasury shall transfer from the Fund to each Commission the amount from the Fund that is determined to be payable to the Commission pursuant to subparagraph (B). The amount shall be used by the Commission in accordance with subparagraph (C).

(B) DETERMINATION OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of Agriculture shall determine the amounts payable to each Commission according to a pro rata distribution based on a formula determined by the Secretary in accordance with clause (ii).

(ii) FORMULA.—The formula shall take into consideration, on a historical basis, the number of dislocated workers in the State in proportion to the total number of jobs lost in each industry in which dislocated workers are employed.

(C) USE OF AMOUNTS.—

(i) IN GENERAL.—Subject to clause (ii), a Commission shall use amounts received pursuant to subparagraph (A) to achieve rural development by—

(I) making loans pursuant to subsection (e); and

(II) facilitating the operations of the Commission.

(ii) ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the funds made available to a Commission may be used for administrative expenses.

(4) TERMINATION.—The Fund shall terminate on October 1, 1998. After termination, any amounts remaining in the Fund shall be paid to the general fund of the Treasury.

(d) COMMUNITY RURAL DEVELOPMENT COMMISSIONS.—

(1) IN GENERAL.—There is established for each affected State a Community Rural Development Commission.

(2) MEMBERSHIP.—

(A) COMPOSITION.—Each Commission shall be composed of five members appointed by the Governor of the affected State.

(B) CHAIRPERSON.—

(i) IN GENERAL.—Each Commission shall elect a chairperson from among its members.

(ii) TERM.—The chairperson shall serve for a term of 1 year.

(C) VACANCIES.—A vacancy on a Commission shall be filled in the same manner in which the original appointment was made.

(D) COMPENSATION.—Members of a Commission shall serve without compensation.

(E) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for a Commission, members of a Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses pursuant to section 5703 of title 5, United States Code.

(3) DUTY.—In accordance with subsection (e), each Commission shall distribute loans and other assistance to communities from monies received from the Fund.

(4) MEETINGS.—

(A) IN GENERAL.—A Commission meeting shall be open to the public, unless the meeting concerns a personnel or budgetary matter.

(B) NOTICE.—A notice of a Commission meeting shall be published 30 days in advance in a newspaper of general circulation in the State.

(C) RULES OF PROCEDURE.—Each Commission shall adopt and make available to the public such internal rules of procedure as the Commission considers necessary.

(5) STAFF.—Each Commission may appoint, fix compensation for, and assign and delegate duties to an executive director and such other employees, and procure such temporary and intermittent services, as the

Commission considers necessary to carry out its duties.

(6) ASSISTANCE FROM OTHER AGENCIES.—

(A) IN GENERAL.—Each Commission may use, with the consent of the agency, the services, equipment, personnel, and facilities of Federal, State, and other agencies with or without reimbursement.

(B) TECHNICAL ASSISTANCE.—Upon the request of a Commission, a Federal agency may provide technical assistance on a nonreimbursable basis to the Commission to assist the Commission in carrying out its duties.

(C) COOPERATION.—Subject to subparagraph (B), each Federal agency shall cooperate fully in making its services, equipment, personnel, and facilities available to each Commission.

(7) REPORT.—Not later than 90 days after the end of each fiscal year during which a Commission is in existence, the Commission shall submit in writing to Congress, the Secretary of Agriculture, the Secretary of the Interior, and the Governor of the State, a report that addresses—

(A) the activities of the Commission;

(B) the economic conditions and the employment situation of communities in the State;

(C) any recommendations that the Commission may have concerning the economic conditions; and

(D) any other rural development issues considered appropriate by the Commission.

(8) TERMINATION.—Each Commission shall terminate on September 30, 1999.

(e) COMMUNITY RURAL DEVELOPMENT LOANS.—

(1) IN GENERAL.—For the purposes described in paragraph (2), each Commission shall distribute monies received from the Fund in the form of loans to communities that are eligible in accordance with paragraph (3).

(2) PURPOSES.—To further the purposes of rural development, loans shall be provided to—

(A) assist eligible communities and businesses in achieving economic diversity; and

(B) carry out such other purposes as the Commission considers appropriate.

(3) ELIGIBILITY.—A community shall be eligible for a loan if the community—

(A) has associated with it employment in a wood products, log harvesting, or log hauling or transportation company that during the period beginning 2 years before, and ending 3 years after, the date of enactment of this Act has experienced a plant closure or reduction in its work force of at least 33 percent; and

(B) is approved for assistance by the Commission for the State.

(4) REVOLVING LOAN FUND.—

(A) IN GENERAL.—Each Commission shall establish a revolving loan fund from the monies made available to the Commission for the purpose of making low interest loans to businesses that—

(i) have been adversely affected; and

(ii) have 300 or fewer employees.

(B) PROMOTION OF NEW BUSINESSES.—A Commission may set aside a portion of the funds made available to carry out this paragraph for loans to promote new businesses in communities.

(5) ELIGIBILITY FOR OTHER ASSISTANCE.—Nothing in this subsection is intended to affect the eligibility of communities for technical planning assistance and loans intended to achieve economic diversification and enhance local economies under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6611 et seq.).

(f) PROVISION OF INFORMATION TO COMMISSIONS.—Prior to taking any action with respect to managing a Federal forest within an affected State that may have a substantial local or regional impact on employment in communities, the Secretary of Agriculture and the Secretary of the Interior shall inform the Commission for the State of the proposed action.

Mr. ADAMS. Mr. President, I now inquire of the Senator from Oregon, the reason I presented the amendment is so we might arrive at a time agreement. It is my understanding, and this is what I was prepared to have a discussion about, that the Senator would like to have it go over until tomorrow. If we would like to enter into a time agreement on this?

If we could do this at this point, I would be prepared to do so and we might move ahead with this bill. There is no attempt to try to press this through tonight but I have been standing here for hours and wanted to be sure. The matter has not been presented. Can we now, with the assistance of the floor manager and the Senator from Oregon, arrive at an agreement on hearing this, to have this amendment come up tomorrow and under a time agreement?

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I have not seen this amendment before today. I think it may—I do not know—have very serious impacts on the biggest industry in my State. I do not know if it does or not. And I am not prepared, nor frankly is another Senator on our side, to enter into a time agreement. And if it is the insistence of the Senator that unless he gets a time agreement he goes ahead tonight, I would suggest he go ahead tonight then because I cannot without knowing what is in this agree to a time agreement.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. ADAMS] is recognized.

Mr. ADAMS. I know that the floor manager has a series of amendments, including the amendment of the Senator from Illinois, which he has agreed they have time limits and that they can proceed. I can only take the statement of the Senator from Oregon to be that he is blocking the amendment because we have agreed upon the fact we would go over until tomorrow and that we would be most willing to enter into a time agreement to try to move things along. We have been here a considerable period of time. This was presented to the Senator's office last night. So we know that he is aware of the content of it. So if the Senator would please explain to me why it is we cannot proceed.

Mr. PACKWOOD. I will be glad to explain. I have never seen this amendment. My staff has not had a chance to digest it. They have been working on Finance Committee amendments. If it came to our office last night, I did not see it. I have been on the floor all day today. The Senator has not talked to me once about asking for a time agreement or what this is, and I am not going to give the Senator a time agreement until I have had a chance to look at it and call people in Oregon. I could not analyze it while I am managing this side of the bill. So if the Senator wants to go ahead tonight, go right ahead. There will not be any votes tonight. Go ahead and call it up.

Mr. ADAMS. On those conditions, because of the request that I have previously received from the manager of the bill that he wants to proceed—I remember when the log export matter came up before; none of us was notified about it either. That is why we did the courtesy of notifying the Senator the night before. If it is the position of the Senator from Oregon that he is going to block all votes on this bill tonight, I am not going to offer this amendment tonight because that is not the way this Senator operates. I will offer this amendment tomorrow. We will try to obtain a time agreement. It was my understanding we would receive a time agreement tonight or I would not have offered the amendment. I am disappointed that we have not received one.

I will withdraw the fact that I do not understand why this is occurring other than the Senator does want to block it. That is why I said what I did. But I am willing to let the matter proceed because I know the manager of the bill and the Senator from Illinois wish to proceed and the Senator from—we had a previous time agreement with the Senator from Vermont, 2½ hours. So I am not trying to step in front of these people who have previously had time agreements, but I am trying to get this amendment up so it can be discussed.

We will have further discussions with the Senator, but I want him to understand that I do not understand why he is not willing to proceed with this as we did with log exports once before when he was requesting it and we all appeared, without a great deal of notice, argued the matter, and it was passed.

So I withdraw the amendment, I will say to the Senator from Texas, who is managing the bill, because I had understood we would be able to get a time agreement, but I will present it tomorrow.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas [Mr. BENTSEN] is recognized.

Mr. BENTSEN. I know I encouraged the Senator to withdraw the amendment. In all candor, I thought we would be able to work out a time agreement tonight. I apparently was in

error. I apologize to the Senator for that. And I will work with the Senator and the Senator on the minority managing the bill to see if we can work out a time agreement again.

Mr. PACKWOOD. Mr. President, I do not want to leave any misimpressions. I have another objection on our side also. All I am saying is this may be a very significant amendment to the principal industry in Oregon. I do not know because I have not seen it. I have not had a chance to study it. My staff has not had chance to digest it. And I have not had an opportunity to talk to anybody in Oregon about it, and I am not likely to get them today. So if the Senator thinks he is going to bring this up tomorrow, with a half-hour or hour time agreement, with a 3-hour time difference and I have not been able to talk to anybody in Oregon, he is simply wrong. It may not be of consequence. I do not know if it is of consequence, but I have a feeling it is.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. I will state to the Senator the amendment is filed at the desk. I am sending to the Senator now a copy to make certain he will have it. We will request a time agreement tomorrow. I hope that can be achieved. If not, if the Senator intends to block it and prevent it from happening, that will happen tomorrow.

But I thank the Senator from Texas for his courtesy. I apologize to the Senator from Illinois because I know he is waiting to present his amendment. I had hoped we could get this time agreement. This amendment is spread on the record. Certainly I will see to it a letter is placed on everyone's desk tomorrow morning.

AMENDMENT NO. 3174

(Purpose: Striking deduction for goodwill)

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized.

Mr. SIMON. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself and Mr. CONRAD, proposes an amendment numbered 3174.

Mr. SIMON. Mr. President, I ask unanimous consent that the amendment be considered as read.

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

The amendment is as follows:

On page 1329, lines 2 and 3, strike "GOODWILL AND CERTAIN OTHER" and insert "CERTAIN".

On page 1329, lines 8 and 9, strike "GOODWILL AND CERTAIN OTHER" and insert "CERTAIN".

On page 1329, line 15, strike "16-year period" and insert 14-year period".

On page 1330, lines 10 and 11, strike "subparagraph (D), (E), or (F)" and insert "subparagraph (B), (C), or (D)".

On page 1330, strike line 24.

On page 1331, strike line 1.

On page 1331, line 2, strike "(C)" and insert "(A)".

On page 1331, line 14, strike "any customer-based intangible" and insert "any customer list".

On page 1331, line 18, strike "(D)" and insert "(B)".

On page 1331, line 21, strike "(E)" and insert "(C)".

On page 1332, strike lines 3 and 4, and insert: "(D) any franchise.

On page 1332, strike lines 5 through 18, and insert:

"(2) CUSTOMER LIST.—The term 'customer list' includes any subscription list".

On page 1334, line 24, strike "16 years" and insert "14 years".

On page 1335, lines 9 and 10, strike "except as provided in subsection (d)(2)(B),".

On page 1338, line 1, strike "(d)(1)(E)" and insert "(d)(1)(C)".

On page 1338, line 8, strike ", trademark, or trade name".

On page 1338, line 10, strike "(d)(1)(D)" and insert "(d)(1)(B)".

On page 1340, lines 3 and 4, strike "which is described in subparagraph (A) or (B) of subsection (d)(1) (or".

On page 1340, line 7, strike the parenthesis after "section".

On page 1350, beginning with line 22, strike through page 1351, line 3, and insert:

(1) Paragraph (1) of section 1060(b) is amended by inserting "or section 197 intangibles" before the end period.

(2) Paragraph (1) of section 1060(d) is amended by inserting ", including section 197 intangibles" after "similar items".

On page 1351, in the matter between lines 7 and 8, strike "goodwill and certain other" and insert "certain".

On page 1351, in the matter following line 21, strike "goodwill and certain other" and insert "certain".

Mr. SIMON. Mr. President, I think we have an understanding, and I would like to propose with the concurrence of the chairman of the committee that we have a 2-hour time agreement, and we may get through before that time. A 2-hour time agreement and no secondary amendments be in order.

Mr. BENTSEN. That is in accord with my understanding. I would like to clear that with the manager of the minority.

Mr. DANFORTH. Yes, that is all right.

Mr. BENTSEN. And that no points of order are waived.

The PRESIDING OFFICER. Does the Chair understand that the request is for a 2-hour time agreement, no points of order waived, with no secondary amendments?

Mr. BENTSEN. No secondary amendments, with no points of order being waived.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. There will be a 2-hour time agreement controlled in the usual form.

Mr. SIMON. Mr. President, I will be brief in my opening remarks because Senator METZENBAUM wishes to speak on this and has another engagement that he has to get to very shortly.

First of all, I differ with my friend, the chairman of the committee, with reluctance because of my high regard for him. Senator BENTSEN just has made a tremendous contribution to this body, and let me add back in 1984 he served as chair of the Democratic Senatorial Campaign Committee, and he helped the Congressman from Illinois named PAUL SIMON to get elected to the Senate. So there is an added reluctance to my differing with him.

I offer this amendment in behalf of Senator KENT CONRAD and myself. What it does, very simply, is to eliminate goodwill as a deductible item which is in here for the first time since 1927. Who benefits from this? The only people who benefit are corporations that buy other corporations—the only beneficiaries from this. Who loses? The taxpayers lose. While immediately in the window here it is revenue neutral, long term the loss is $2 billion a year. And if we are going to balance the budget, someone will have to pay that $2 billion, and it is likely to be middle-income taxpayers.

The second loss—this is not just wasting money. The second loss is to the economy. We are encouraging mergers and acquisitions rather than encouraging investment in plant and production and research. It is just irrational to do that.

Finally, a great many people employed lose out. Every time we have these mergers, there are people who lose jobs. And workers who have entered into negotiations and have collective bargaining agreements, frankly, lost out because, under a quirk in our law, when one corporation buys another corporation, that second corporation, the acquiring corporation, does not have to live up to the collective bargaining agreement. So I think it is bad news all the way around.

I understand the pressures that our colleagues are under on this amendment from a lot of interests around the country. I hope we will stand up for the public interest.

Mr. President, at this time I yield to Senator METZENBAUM as much time as he may consume.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I rise to support the amendment of the Senator from Illinois. I want to say I am so angry about this provision in the bill. I believe that it is unbelievable. It is absolutely incredible that this matter is on the floor and in this bill. It is just hard to conceive why anybody would put this in the bill. It boggles the mind.

Since 1927, there has been anything like this since the Tax Code back there began having to do with taxing the corporations. How can you possibly justify just giving away over $2 billion a year to corporations who are not hurting? There is no special reason to do it. It is just because the U.S. Senate and the U.S. Congress is overly generous.

We are being misled about this amendment. Some will say it makes money. Do not kid yourself. It does not make a penny. It makes money by a specious kind of reasoning. There are cases pending out there where the IRS is attempting to collect where there have been deductions made with respect to the matter of goodwill, and this bill provides that they can settle those back claims for 75 cents on the dollar, and, therefore, it brings in more dollars now, and, therefore, they say it makes money. Come on. Who are you kidding? How stupid are we in the Senate and how stupid are the American people to believe that?

If there is a valid claim against corporations with respect to goodwill deductions, and then you settle it for 75 cents on the dollar and then claim you are making money, you are actually losing 25 cents on the dollar and you are losing the interest as well.

Mr. SIMON. Will my colleague yield?

Mr. METZENBAUM. Yes.

Mr. SIMON. I hesitate to disagree with my colleague, but the bill provides that they collect 25 cents on the dollar, not 75 cents on the dollar. My amendment, unfortunately, does not deal with that provision, but with another provision in this bill that is not good.

Mr METZENBAUM. I am extremely grateful to the Senator from Illinois for correcting me. I was advised within the last 10 minutes by the Joint Tax Committee represented on the floor that if you collect 75 cents——

Mr. SIMON. I will check again.

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

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

Mr. METZENBAUM. Mr. President, the Senator from Illinois is 100 percent correct. I have to say to these young gentlemen on the floor, they had advised me one way, or else I misunderstood. But the Government does not get 75 cents on the dollar; it gets 25 cents on the dollar—25 cents on the dollar. It was interesting to me, when we had a short discussion, that the ranking member or second ranking member, I believe, managing the bill at the moment had the same misunderstanding that I did as to whether it was 25 cents on the dollar or 75 cents.

What are we doing here? Are we not truly interested in a thing called balancing the budget? There is no business purpose of this kind. This is not a matter of helping American corporations. This is a matter of giving them a bonanza. We do not single out those that are in need. We do not say to those that are seeing to it that there is more employment in the country. We are just saying to all the wheelers and dealers, here it is. Here is a gift. We like you. The U.S. Congress is giving you the right to deduct goodwill.

Never before in the history of this country—we talk about responsibility. This provision is the most irresponsible provision in a tax bill that I have ever seen. There is not any logic or reason for it. And, again, I want to repeat, claiming that it picks up money is specious reasoning.

The proposal which the Senator from Illinois and I oppose, which would allow the amortization of goodwill for tax purposes, is absurd. That is an economic Trojan horse. It would promote uneconomic corporate takeovers, weakening the economy and companies' ability to compete, and it would retroactively give companies money to which they are not entitled.

Every day of the week, every week of the month, every month of the year, this Congress and the United States all talk about the problems of the Nation, the infrastructure, what we have to do for it, the underprivileged, how we cannot afford to extend Head Start Programs to a lower age than they presently are because we do not have the money. We complain about the fact that we do not have enough to pay Medicare or Medicaid—and it is a justifiable complaint. We know that we do not have enough to provide for so many of the things this Nation needs. And, last but not least, the deficit, the deficit of $3 trillion; we just permit it to go on and on and on.

Then we come out here on the tax bill and throw away—throw away—at least $2 billion a year. We ought to be ashamed of ourselves for even having to talk about this bill.

This amendment will not pass. It will not pass because almost everybody on the other side of the aisle will vote for it, and too many on this side of the aisle will vote for it, and the Finance Committee is for it.

I am a realist. The fact is that does not make it right. That ought to make us more ashamed of ourselves. Goodwill is a fiction created by a takeover economy. It masks enormous deficits and tangible net worth, some of which were created by the takeover craze of the last several years.

The value of intangibles, including goodwill increased from $45 billion in 1980 to $400 billion in 1989, mainly due to takeovers, and now we are going to let them write that off.

How can we possibly stand here and do this? How can anybody logically hold their head high and say we are going to permit corporations who do not need it, who have not asked for it, there has been no claim for it, have never heard of the idea before this year, come along and write off their goodwill?

The mergers and acquisition industry now wants to pass the cost of these intangibles as much as possible to the taxpayer. We only need to look at the history of the 1980's to know that this proposal is just not sound national policy. In the 1980's, takeover artists rationalized acquisitions by arguing how strong the balance sheet of the eventual company would be. We know now that these balance sheets were inflated with goodwill. That goodwill is the equivalent of the watered stock of the 1920's, and now we are going to take that goodwill and let the American taxpayer pay for it by permitting it to be written off.

The companies' cash flow collapsed in the twenties and their balance sheets were in trouble, and that is exactly what is going to happen under this if we permit this to go forward. Companies' market prices have moved down to realistic levels, but the goodwill intangible remains at its inflated high. So we are going to just let them get a deduction, just reach up in the sky and get a deduction.

Why do we not let the individual, the homeowner, the average taxpayer have a right to deduct the goodwill that he has because he has a good family relationship? Maybe that ought to be written off. It makes as much sense as permitting this to be written off.

The takeover artists now want to earn another fee by using their expertise one more time by foisting off on the taxpayer this question of tax of goodwill deduction.

Goodwill was the smoke and mirrors of the mergers and acquisition craze of the 1980's. Its only useful purpose was to rationalize the sale of overpriced securities to finance takeovers. For instance, the Philip Morris-Kraft and the Time-Warner mergers were sold because 80 to 90 percent of the purchase price was booked as goodwill, and now we are going to say you can start to write that off and deduct it from your taxes.

Allowing the amortization of goodwill would only serve to promote and extend a dangerous fiction, that something can be created from nothing. There is no free lunch. This proposal would have the taxpayer pick up the bill, the taxpayer who is already overburdened, and we do not provide any special relief for that taxpayer, and what we do is provide special relief for the largest corporations in this country.

Amortization of goodwill would extend the life of the perilous takeover industry, extend it even as we are struggling to recover from the last disaster it helped to create.

Amortization of goodwill would pass the costs of the takeover industry to the general taxpayer who wants no part in it, does not know what we are doing tonight, but should be concerned about what we are doing, because we

are once again about to dig into his or her pocket for the benefit of corporations—and those special group corporations, just those who have goodwill on their books, and we are going to permit that to be written off. The taxpayer who wants nothing more than to protect his or her family from this kind of procedure has no protection. He or she is going to be stuck with the bill of our actions here this evening, if we permit this to go forward.

Amortization of goodwill will subsidize the takeover game and insulate its practitioners from responsibility for what they have done.

Amortization of goodwill will cost productive jobs. Fortune magazine's review of 41 of Fortune "deals of the year" between 1985 and 1990 showed that half of the companies are in poor or failing health, and some are in bankruptcy. The leveraged buyout of Safeway cost 7,000 employee jobs in Dallas and another 4,000 in Salt Lake City. And another 20,000 took substantial cuts in wages and benefits. Hooray for the takeover craze.

We cannot afford to jeopardize the financial security of millions more by enacting legislation that will promote the use of goodwill and its progeny, takeovers.

The provision in H.R. 11 allowing for the deduction of all intangibles is just another tax break for the wealthiest corporations and the wealthiest people in this country. It could cost the American taxpayer as much as $2 billion a year. If goodwill had been deductible when the Philip Morris-Kraft deal happened in 1989, nearly all of the $13 billion price tag could have been written off.

Those who benefit from the proposal will not be those most in need of a tax break—the poor and middle class Americans. No, the beneficiaries of this tax bonanza will be those employed in the paper industry of takeover artists, tax lawyers, and investment bankers. These people are paid enormous fees to take companies over, not to make companies produce useful products, not to make companies employ more people.

Amortization of goodwill makes takeovers more profitable. It does not make companies more productive. Amortization of goodwill promotes deals that destroy and ruin the livelihood of millions.

Repeating what I said before, I do not know of any more audacious matter in a tax bill since I have served in the U.S. Senate in the last 17 years. It is an absolute giveaway.

I commend the Senator from Illinois for his leadership in bringing this amendment to the floor. I am concerned that he will not have the votes to pass it, but that is by reason of the fact that almost everybody over there will vote against it, and too many on this side will vote against it.

But the reality is if the American taxpayer had the right to stand on this floor and vote, the American taxpayer, the average individual, would vote 100 to zero against this proposal. This is wrong. This is wrong. This is rapacious. This is the kind of thing that causes people to have disrespect for the Members of Congress.

There is not anything this does for the economy. All this does is put more millions, more billions in the hands and the pockets of those who need it least.

We should pass this amendment of the Senator from Illinois. I commend him for offering it. I hope we will do so. I am concerned that we will not.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. I yield 10 minutes to myself.

I have seen some gross misrepresentations of legislation in the past, but I think I have just heard the grossest misrepresentation yet when the Senator talks about a rapacious thing. If you want to talk about trying to take care of lawyers—and I understand the Senator's concern about lawyers—but if you are trying to take care of the lawyers and keep these cases going and this kind of litigation going and the costs to business high, and those costs being passed on to the consumers, then defeat this piece of legislation.

With his stated deep concern as to the budget deficits and what that would do, look at the votes to waive the budget this afternoon, time and time again. One of them would have added $1.3 billion to the deficit by the attempt to waive the budget requirements.

They talk about it just being for big business. This is virtually all businesses endorsing this. This is true for the small business community. I have letters from the National Federation of Independent Business supporting the legislation, opposing the Simon amendment. The same position is taken by the National Small Business United. The same by a cross-section of industries from the media to the airlines, from the bankers to the phone companies, from the retailers to the restaurant owners, insurance agents to the heating oil dealers, and these are not big business.

Further support for this measure comes from the American Bar Association and the American Institute of Certified Public Accountants.

The amortization of goodwill is permitted under the tax laws of most industrialized countries and usually over shorter periods than the 16 years we are talking about here. In Japan, in Korea, The Netherlands, Sweden, goodwill may be amortized over 5 years, not 16 years. That is what we are talking about here. Germany, over 15 years. Finland over 10 years. Canada, 7 percent per year on a declining balance basis. Other countries that permit the amortization of goodwill are Belgium and Colombia.

And this legislation has been praised in editorials across this country. Let me cite for you a few of them. Look at the Chicago Tribune, from Senator SIMON's home State; the Dallas Morning News in my State of Texas; the Augusta Chronicle in Georgia; the St. Louis Post-Dispatch in Missouri; the Boston Sunday-Herald in Boston; the Richmond Times-Dispatch, and the Norfolk Daily News in Virginia; the Mobile Press in Alabama, and the Journal of Commerce, and on it goes.

What we are talking about is simplification, and certainly that is what we are tying to do. We are trying to accomplish a resolution of controversies.

The issue of how the cost of intangible assets ought to be recovered has been the source of an extraordinary amount of dispute and litigation between the IRS and taxpayers over the years. One issue has been whether a particular intangible asset claimed by taxpayers is an asset that should be amortized, or in contrast, is goodwill, which may not be amortized. According to the GAO, two-thirds of the litigation in this area is over this question.

For example, are customer contracts an intangible asset, separate and distinct from the goodwill of the business? Another is the value of the intangible asset that may be amortized. If the customer contracts are separate from goodwill, has the taxpayer overvalued the customer contracts and undervalued goodwill?

These are the things we are trying to resolve, to save on the attorney's fees, to get down the costs to business.

Yet another issue is the proper life of the intangible asset that may be amortized.

Should the customer contract, if it is separate and distinct from goodwill, be amortized over 5 years, 8 years, 10 years?

All of these questions, multiplied by the hundreds of different intangible assets identified by taxpayers, have been the subject of litigation and disputes.

The IRS and taxpayers spend countless dollars on accountants, appraisers, and lawyers. Time of businessmen is devoted to depositions in testifying rather than running their operations. That is a terrible drain on a tax administrative system and on the productive resources of our economy. We just do not need that kind of waste.

The solution developed by Mr. ROSTENKOWSKI and the administration and provided in this bill is to end all disputes by lumping together all the intangible assets, and that includes goodwill, under one uniform amortization period, 16 years in the case of the Senate version we have before you. No more disputes over what is or is not goodwill. All intangible assets are treated the same. No more disputes

over the allocation of value between amortizable intangible assets and nonamortizable goodwill. Both are treated the same so it will not matter. No more disputes over the proper life. It is set by statute at 16 years. End of discussion.

Sure, that is rough justice. Of course, it is not perfect justice, but there is a price worth paying for simplicity, for the settlement of controversies, and this legislation would accomplish those goals.

Senator SIMON'S amendment would restore all the complexity, the uncertainty for business planning, and guarantee the continuation of endless litigation. All the issues over what is goodwill and overvaluations would still remain.

Let me read you a quote from Treasury Assistant Secretary for Tax Policy, Fred Goldberg. He testified as follows at the Finance Committee hearing on this legislation on April 28 of this year:

> Having seen the tax system from a number of perspectives—as a practitioner, as chief counsel and Commissioner of the IRS, and now as Assistant Secretary for Tax Policy—I regard the legislation concerning intangibles as the most important simplification measure under consideration by the Congress. The current regime for taxing purchased intangibles;
>
> Results in substantial uncertainty and the unequal treatment of similarly situated taxpayers;
>
> Imposes needless transaction and administrative costs on taxpayers and the Government;
>
> Leads to frequent and expensive controversies between taxpayers and the IRS; and
>
> Deprives the Federal government of substantial tax revenues that are properly due and owing.
>
> No amount of after-the-fact enforcement and litigation can remedy the situation—legislation is essential if we are to eliminate this source of waste, inefficiency, and controversy.

Mr. President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 8 minutes of the time allotted to him.

Mr. BENTSEN. I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois [Mr. SIMON] is recognized.

Mr. SIMON. Mr. President, I would like to discuss this in a little more detail than I did in my brief opening remarks. Let me respond to my friend and colleague, Senator BENTSEN. I do not suggest that the present situation is a healthy one. I think that we do need legislative remedies, and just in a very small way my amendment does a little bit by saying you can depreciate customer list and subscription list.

I do not pretend my amendment solves this problem, but I do differ, and I differ strongly, with the Senator from Texas in saying let us just write off goodwill. And these other countries that he cited have not had the merger mania that we have, because they have other barriers to that kind of merger and acquisition.

In terms of the administration testifying for it, frankly that does not surprise me. The administration has frequently been spokespersons for the major corporations. And while it is true, as Senator BENTSEN said, small businesses can benefit, the major beneficiaries are the larger corporations.

The fundamental question that we face is what do we subsidize in this country? When it comes to Head Start, I think we ought to subsidize it. When it comes to some things that we need in terms of corporate investment, I think we ought to make some changes. When the 1986 tax bill was up, and I am pleased to say I voted against that, but you will find an exchange in the RECORD between Senator Russell Long and myself on the question of whether we should have an investment tax credit. I happen to favor that. An investment tax credit gives credit to corporations for investing in greater productivity. That I understand.

But why we should give tax credit subsidies to corporations just for gobbling each other up, that I do not understand.

What this amendment is going to do clearly is to foster a new round of merger mania in this country in addition to what it does in terms of losses of revenue.

The Joint Tax Committee letter to me says the revenue losses expressed in 1997 income levels would probably—this goes beyond the window right now covered by the bill—would probably be in excess of $2 billion per year.

My amendment does not cover the retroactive feature that Senator METZENBAUM is talking about. I agree with his criticism completely, but frankly I too decided not to take on the whole bite. There is some temporary income here as a result of getting 25 cents on a dollar. It is a pretty good deal for quite a few people. But this amendment changes the amortization period from 16 years to 14 years and says we are not going to shift from a position that this country has had since 1927.

Why should there be the difference? When a corporation buys another corporation and you have equipment, that equipment deteriorates, and so we say you can depreciate that on your tax bills. When they buy a building, that building depreciates. But if, for example, you buy General Electric, why does General Electric's goodwill deteriorate?

If for example, the distinguished Presiding Officer, Senator BRYAN, buys General Motors—and I am sure he has the wealth to do that—if he buys General Motors, he buys it on the assumption that it is going to retain its value, not that it is going to go downhill.

The very fine officers of Pepsi-Cola came into my office urging me not to propose this amendment. I happen to own a few shares in Pepsi-Cola and I said to them, but if someone buys Pepsi-Cola is that going to suddenly depreciate in value like equipment in a building? And they said, no, but we have invested all this advertising in creating the name and the goodwill. And I said that is exactly right. And then I asked him, did you write off the advertising? And of course they did.

This gives them or someone a chance to write things off twice, and that just does not make sense. It adds to the deficit. I have talked about that already.

What we ought to be doing—we have had discussion about balancing the budget. There is no sense in creating this long-term drain on the budget, a long-term drain that hurts the economy.

I happened to vote against the space station. The majority of my colleagues differed with me. But I have to say building a space station does not drain the economy, whatever, $40 billion, $100 billion, whatever it is going to cost. But when you subsidize mergers, you not only lose the $2 billion, you say to corporations we are going to give you a special reward not for buying plant and equipment, not for putting money into research; we are going to give you a special reward for one corporation gobbling up another corporation.

And that is all this does.

The letter from the Joint Tax Committee, among other things, says the new tax deductions accorded goodwill and going concern value in the current version of H.R. 11 cause a long-run revenue decrease. We have to recognize that reality.

The Congressional Research Service says, in a letter from Jane Gravelle:

> If we express these numbers in 1997 income levels (the final year of the budget horizon), the revenue cost would probably be in excess of $2 billion per year. It is possible that the loss could be smaller, but it is more likely that the loss would be even larger.

That is the reality. Two billion dollars a year in perpetuity that we lose.

We save, even in this short term—and people are interested in short-term savings on the deficit—we save $631 million under the Simon-Conrad amendment.

Now, what is wrong with the mergermania that we have had? Well, we have invested huge sums in things that are not productive. We have reduced the savings of the country.

When, for example, U.S. Steel, now USX, spent $6.5 million to buy Marathon Oil. And I voted for some special tax breaks for the steel industry because they needed to modernize. But when they did this, what did that do to modernize the steel plant of this country? Not one thing. How many new oil wells did it dig? Not one.

They borrowed $5.1 billion, and because of our tax laws they can write

that off, the interest on that. And who pays for that? Well, all of us. And now under this proposal, they could also write off goodwill. It will encourage more and more of this kind of thing.

Let me quote from an article in Crain's Chicago Business. I will just read the first paragraph here.

One by one, they disappeared: Names like Beatrice, Gould and Northwest Industries.

Companies that were once the soul of corporate Chicago are fading from the memories of their one-time stockholders, the public and their peers. The take-over binge of the 1980s, bracketed by two recessions, has bulldozed the Chicago area's corporate landscape.

Study of the region's largest public companies shows that half of the 224 firms that reported revenues in excess of $1 million in 1980 have vanished.

That is what is happening. And then listen to an article by Robert McIntyre in the Washington Post. The heading is, "Return to the Merger Maniacs." And the subhead is, "Why is the White House Pushing New Incentives for Acquisitions?"

Let me just read the last few sentences in this article.

Does it really make sense to give Wall Street new incentives to bring back the merge mania of the 1980s? If the Bush administration wants to simplify the tax laws concerning goodwill, fine. But rather than allowing everything to be deductible, we should make clear that acquiring companies cannot write-off goodwill and similar items built up by the companies they gobble up.

(Mr. WOFFORD assumed the chair.)

Mr. SIMON. There is a group of corporations called Coalition on Intangibles that has been pushing this. It is very interesting. Since August 1991, these very companies have spent $40 billion on acquisitions. These companies are coming in here saying, "Won't you give us some gifts for what we are doing?" And a number of them are pending.

We have a choice, Mr. President, of helping the Coalition on Intangibles and all the big corporations they represent or the people of America. And I hope we vote on the side of the people of America.

Now, there are those who say, well, corporate mergers are gradually dying down.

First of all, as I shall make very clear in a few minutes, we are asking for a huge spurt in this if we pass this bill as it now stands without my amendment.

But listen to the New York Times, September 14, just about 10 days ago, in a story by Kenneth N. Gilpin. He says:

After sputtering for almost two years, merger and acquisition activity suddenly picked up in the last two weeks and the traffic was heavy with well-known brand names.

I assume that the word has spread about what may happen.

What happened in terms of capital in this country, from 1980 to 1989, in terms of mergers. The grand total of capital spent not to increase productivity in this country, not on research, not to buy plant and equipment, not to do the things that create jobs, but just for one corporation to gobble up another corporation, the grand total spent on that from 1980 to 1989 is $1.336 trillion. And this bill says, let us do more of it. It really is not in the national interest.

Newsweek magazine, August 10, says:

The current measure—if approved by the Senate as part of the urban-aid bill—would create for the first time a direct tax subsidy for companies participating in a buyout.

Newsweek quotes Representative JIM LEACH of Iowa as saying: "It's a ripoff for investment bankers."

Today, I talked to the CEO of one of the largest investment financial houses in the Nation—a firm that will benefit from this, incidentally—and he told me that, while he does not want to be quoted directly, he said, this just does not make sense.

The Financial Times of London said:

An important tax bill pending in the U.S. Congress would permit depreciation on Intangibles, including goodwill for tax purposes. This would appear to eliminate a major U.S. tax barrier against takeovers.

Just a short time ago, Congress had been carefully scrutinizing possible tax incentives for acquisitions such as deductions for interest expense—

And, incidentally, I favor reducing that and giving a little more credit for dividends—

with an eye towards removing them.

Now it is considering a proposal that appears to increase the tax attractiveness of acquisitions, especially those in which large premiums are paid.

The Financial World has this to say:

Is mergermania about to rise from the near dead? It's very possible.

It talks about the House Ways and Means Committee proposing this. For the first time since 1927, it would allow goodwill resulting from acquisitions to be written off for tax purposes. "The proposed tax-reporting change is big stuff."

Let us not fool ourselves. It is big stuff.

Listen to Robert Kuttner, writing in Business Week magazine:

The law, if enacted, would set off another merger boom.

This is not PAUL SIMON talking. This is in Business Week.

The legislation is sheer economic waste.

Lester Thurow, distinguished economist, has written a book, "Head to Head," that was on the New York Times best seller list for a long time. Maybe it is still there, I am not sure.

In his book, on page 284, he says this:

Financial takeovers are always justified on the grounds they will enhance productivity and competitiveness, but the promised leaner and meaner corporations do not seem to emerge. No one can know for sure how today's mergers will be performing 15 years from now, but we do know that the last conglomerate merger wave in the late 1960s and early 1970s did not lead to firms with superior performance. The whole process looked much like a random walk—some winners, some losers—on average, average.

The short-run results of the current wave of financial activities are only too clear. Productivity growth is lower at the end of the decade that it was at the beginning of the decade. Firms ended up loaded with two much debt, having too few free funds to invest in new products, new processes, or research and development. With all of that debt they became more risk-averse—less willing to bet on new activities. In many cases, they simply could not bet on the future since the company had effectively already been bet.

Firms become financially weaker and more vulnerable to collapse in recessions. The 1991 recession was the first big test of the merger wave of the 1980s. Would the firms that were affected by those activities be able to survive a downturn in revenue, given their needs to make huge interest payments? Until a recovery is well underway, we won't know the extent of the damage, but midway through the process, for too many the answer is already no. A 1991 list of the firms in bankruptcy that in the 1980s participated in the merger wars would go on for many pages.

And then economist David Calleo, in a book called, "The Bankrupting of America" says

Takeover mania has saddled many American corporations with a heavy load of unproductive debt. Thus, alongside the mushrooming public debt is an equally debilitating private debt.

The Philadelphia Inquirer:

(The proposed "goodwill" deduction for corporations) would prove a boon for Wall Street.

When we talk about goodwill, we frequently think of good will toward everyone. We think of Christmas. My friends, if we pass this and do not adopt our amendment, we have created Christmas in September for America's corporations that want to participate in this merger mania.

David Wittig, co-head of mergers and acquisitions at Salomon brothers, and I am quoting:

If the deductibility of goodwill they are discussing goes through, it will spark some business.

Bob Chapman, vice president of Arbitrage, at County NatWest Securities:

Amortization of goodwill would be a huge boon.

There is a memo from Goldman Sachs that says:

The recent news around the bill reignited the takeover talk.

We should not fool ourselves about this. It will encourage takeovers through debt rather than equity, when, in fact, I believe it is clear that the national interest is that we do precisely the opposite.

I personally have introduced a bill that, just for discussion purposes, says only a corporation with income of more than $1 million can deduct 80 percent of its interest, but 50 percent of the dividends. It would encourage equity financing rather than debt financing. But this bill goes in precisely the opposite direction.

Mr. Dellinger, of NatWest Investment Banking Group analysis:

If this bill passed today, the takeover values of companies that have goodwill would suddenly be greater.

The securities company of Donaldson, Lufkin & Jenrette—and, incidentally, I have to say in fairness to my opponents, they later, and I assume under pressure from various corporations, recanted this. But before they recanted, before they got that pressure, what did they have to say?

The proposed tax legislation could spark a new takeover era. It would significantly reduce the financing costs for future acquisitions and, we believe, possibly set off a new binge of takeover activity.

On July 2, 1992, the House of Representatives cleared a tax bill that would allow companies to write off the goodwill incurred during future acquisitions over 14 years. By contrast, the current provision allows no deduction at all. With most food companies already selling at three to four times their stated book values, the tax deductibility of goodwill obviously would be of immense benefit to acquiring companies.

The County NatWest that I mentioned before in my comments, has a quotation from Bob Chapman. I assume he is with the firm. He says:

Because goodwill is a product of purchase accouting, the successful lobbying of this bill would probably dramatically increase the percentage of mergers consummated through cash consideration versus stock swaps.

I mentioned that before. Just in general, it would escalate the problems that we have.

In recent large deals, such as the Philip Morris, Kraft, and Time-Warner mergers, goodwill has accounted for 80 to 90 percent of the purchase price. So we are saying to firms that before have only been able to deduct 10 to 20 percent of the purchase price, we are going to let you walk away from the store. We are going to give you everything you want.

A member of the Coalition on Intangibles I referred to before has admitted the takeover implications of this proposal. According to an article published in the London Financial Times, partners in the firm of Mayer Brown & Platt, a distinguished Chicago firm, incidentally, state:

Depreciation of intangibles, including goodwill, would appear to eliminate a major U.S. barrier to takeovers. Allowing amortization of goodwill would appear to increase the attractiveness of takeovers.

They also say:

In situations where the major intangible is clearly goodwill, the bill could make the acquisition much more attractive.

I could go on. The GAO, which has a mixed report, says:

A change that would allow recovery of the cost of all purchased intangible assets, including goodwill, would alter the treatment of goodwill for the first time since 1927—

And listen to this:

and would create uncertainty about the future treatment of expenditures that create goodwill.

Such as advertising. That is my comment, not theirs—

and similar assets. The 1927 regulations disallowing amortization of goodwill have influenced the treatment of intangible asset creation costs by taxpayers, IRS, and the courts.

GAO also says:

A change from the current regulatory treatment of goodwill to the use of statutory cost recovery periods for all purchased intangible assets, including goodwill, would raise the issue of the proper tax treatment of costs that create intangible assets.

We think we are simplifying things. GAO says, hold on:

The nonamortization status of goodwill in the 1927 regulations has influenced how taxpayers, IRS, and the courts have treated the cost of creating goodwill. These practices and judicial doctrines may be left in a state of uncertainty, if the basic rule is changed.

Again, I indicated that I do believe the law needs changing.

What I propose is not an answer to the problem. We do have a problem. But do not let us solve a problem by giving away the store. And that is what this amendment does.

Listen to the Consumer Federation of America:

The Consumer Federation of America therefore strongly supports the Simon-Conrad amendment to strike goodwill. The amortization of goodwill, if allowed, would provide relief to a few merger maniacs while imposing grief on the American middle-class taxpayer consumer.

Mr. President, we ought to be acting in the public interest. I think the public interest is not served by creating more debt, by encouraging this merger mania, and finally by, in the process of doing that, causing a great many people to be laid off from their jobs. I hope we will do the sensible thing this evening and adopt my amendment and improve this tax bill.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I yield 5 minutes to myself.

I would like to say to my good and highly respected friend from the State of Illinois how much I share his concern about takeovers, leveraged buyouts, the increase of debt in this country; how diligently I have researched and studied that problem to try to do things to discourage it.

I want to tell the Senator that when I started studying what was done on the House side by Ways and Means—and I was deeply concerned about the goodwill provision, because I had heard, too, that that was going to encourage takeovers, and that is the last thing I wanted to see. But the more I studied it, I became convinced otherwise, as I got into the dynamics of takeovers and obtained a better understanding of what motivates them.

In the first place, there can be some increase in value to some companies by this law. I accept that.

But the point is, you generally buy the stock of a company in a takeover. If you buy assets, the appreciation in that value is going to incur an immediate tax, and that tax almost always will be more than the tax benefit realized by the purchaser through the amortization of goodwill—almost always. So I became convinced otherwise.

Now, the Senator was citing Goldman, Sachs and others, and I have a whole list of those, too. I will not bore the Senate with them tonight. Except let me cite what Goldman, Sachs says when they are talking to one of their clients on a question of an acquisition, on the question of using goodwill, on the question of using the Rostenkowski bill as it passed the House. And this is what it says:

However, it will not be helpful in cases of acquisitions of public companies since these are usually stock acquisitions. In such cases the old rules will apply unless the acquiring company elects section 338, writes up the asset value of the acquired company, pays the tax on the asset writeup up front and can then deduct the amortized sums.

But, you see, they meet themselves coming back and such an election is highly unlikely because it is not economical.

Mr. SIMON. Will my colleague yield, and I will be happy to have it charged to my time here?

Mr. BENTSEN. I would like to continue my point.

Mr. SIMON. Go ahead.

Mr. BENTSEN. I heard the Senator at length and I enjoyed it.

Mr. SIMON. I will respond later.

Mr. BENTSEN. Let me make some other points here:

To get the benefit of the legislation. Through a takeover, that seller has to pay the immediate and the full tax gain inherent on the target business assets. That includes any appreciation in goodwill. In return, that buyer would be permitted to amortize goodwill over 16 years. As an economic matter, the present value of the future stream of deductions is just not usually going to be worth the immediate prepayment of the tax on appreciation.

So it does not add up from a business standpoint. To put it another way, if the buyer and the seller structure an acquisition as an asset purchase in order to amortize goodwill, they will together be worse off than if they structured a stock purchase.

Now, that is going to be true on an initial sale or on a subsequent sale of pieces of the acquired company. It will always be true, assuming the seller is not stupid—and we are speaking here about very sophisticated transactions often involving billions of dollars—because the purchase price will reflect any tax benefits a buyer can expect. That is what they crank into that purchase price. The seller will just raise his price, and when the cost goes up, that usually discourages rather than encourages that kind of a transaction.

The fact is—and I have acquired companies in the past when I was in business, and I have sold companies in the past—there are other factors usually that are much more important than the possible amortization of goodwill, factors such as the cost and availability of capital; what kind of interest rate you are going to have to pay in that kind of an acquisition; are your returns going to be enough to take care of the interest plus an increase in profits to your shareholders; the target's liabilities, the target's union contracts.

The prospect of a capital gains tax is far more significant a factor in slowing acquisitions. So, frankly, this legislation would have little effect overall on acquisition activity. Even taking taxes in isolation, if there is a tax benefit to the buyer from the transaction that the seller is aware of, you can sure bet that price is going to reflect that. You are going to crank that into that price. The price will increase to capitalize that tax benefit.

The only way in which you can conclude that the price increase will not absorb the tax benefit is if you assume that seller is stupid. In the kind of multimillion-dollar transaction we are talking about, you can bet the sellers are going to know what they are doing from a tax standpoint.

I must say to my good colleague, I am puzzled by what seems to me to be a contradiction in part of his presentation. The Senator is concerned about takeovers and thus would deny any writeoff to customer-based intangible assets generally. But then he makes that exception for customer lists. Now, I am not sure why that is. I do not understand that.

Is the Senator not concerned about takeovers in the newspaper and magazine publishing industry or takeovers of heating oil businesses or insurance agencies or other businesses, the major assets of which might be a customer or subscription list? Why not? If this legislation promotes takeovers, and takeovers are detrimental, then why are takeovers in those industries somehow different? Indeed, the third circuit recently ruled that customer lists are indistinguishable from goodwill.

Now, the amendment would make other distinctions. For example, an intangible asset called work force in place would remain subject to a writeoff under the amendment, and the courts have generally considered this asset as indistinguishable from goodwill.

An example of this work force in place asset claimed by the taxpayers as a writeoff is the nonunion status of a company's labor force. Now, if the Senator is concerned about the effect of this legislation on workers, how does he draw this line?

Another example. How does he draw the line between franchises which he would allow to be deductible and trademarks and trade names on which he would deny deductions?

It is those kinds of tough, intractable questions that this legislation will try to do away with. We are having the auditors, the accountants, the lawyers in constant conflict, trying to resolve these differences.

I will tell you another thing we did. In the Finance Committee, we brought before us Japanese witnesses, German witnesses, talking to them about goodwill. They write it off in a shorter period of time than we are talking about in this legislation. And then we ask them the fact that you have that written off for goodwill, is that really encouraging takeovers in your country? They said they did not see it. They had no such negative effect from their interpretation.

So I started out just like the Senator from Illinois, concerned about writing off goodwill because I was afraid it was going to increase takeovers. But after study, after the witnesses, I finally came to the judgment that it did not, and that we would get so much more simplification, we would cut out so much more in auditing fees, auditors, accountants, and lawyers that American business could be more productive, more internationally competitive, and that the consumer could get his product cheaper.

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

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. I wonder if the chairman will yield me 10 minutes.

Mr. BENTSEN. Mr. President, I am delighted to yield 10 minutes to my distinguished colleague, the Senator from Missouri.

The PRESIDING OFFICER (Mr. EXON). The Senator from Missouri.

Mr. DANFORTH. Mr. President, first let me say that the provision in the bill that is the target of this amendment is the leading tax simplification provision in this legislation. We have heard so much about the complexity of the Tax Code, and the need for tax simplification. This provision which was the creation of the chairman of the Ways and Means Committee, Chairman ROSTENKOWSKI, and the chairman of the Finance Committee, Chairman BENTSEN, is the leading tax simplification provision in this bill.

The idea that it is some sort of nefarious plot to favor big business and takeover artists is frankly insulting to the chairmen of the two committees and to those people who have worked so hard on this tax simplification measure.

I would point out that the section in the bill that we are dealing with in connection with this amendment has been supported by, among other organizations, the American Bar Association, and the American Institute of Certified Public Accountants. It is supported by the Tax Foundation. It is supported by approximately 30 editorial pages that we found including, Mr. President, an editorial that appeared on September 15th in the St. Louis Post-Dispatch entitled "Tax Simplification Is Worth the Risk."

I ask unanimous consent that the editorial from the St. Louis Post-Dispatch be placed in the RECORD at this point.

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

[From the St. Louis Post-Dispatch, Sept. 15, 1992]

TAX SIMPLIFICATION IS WORTH THE RISK

The Senate will vote soon on a bill containing a major tax simplification initiative, which it should pass. The costly war between business and government over how to depreciate assets acquired when one company buys another must be resolved.

Current rules allow deduction of tangible assets such as buildings and machinery over a fixed number of years. But intangible assets—subscription lists, computer software, leases, covenants not-to-compete, or special technical expertise—can't generally be written off.

Whether or not they can be depreciated over time—the term is amortizable—depends on whether they are classified as something called good will, which is the unquantifiable value to a company of customer loyalty, market position or the nature of its products. It can't be amortized. Historically, most intangible assets have been classified as good will and have not been amortizable, either.

When the majority of corporate assets were tangible, this didn't make much difference. But as the service economy has grown—computer software companies are the best example—the value of intangibles has risen, and so have taxpayer claims that these assets aren't mere good will, but assets that should be amortized. This has led to a multitude of court cases, costing the IRS hundreds of millions.

As the value of intangibles rises, the litigation war will grow. The law should be clarified to end it. Both tax writing committees of Congress, the tax section of the American Bar Association and the American Institute of Certified Public Accountants agree. The Senate tax bill would establish a uniform 16-year amortizaation period for all intangible assets.

This isn't an unreasonable giveaway. Companies claiming shorter depreciation periods for intangibles would be forced to accept longer write-off periods and pay more taxes, balancing revenue lost from those who could elect a 16-year write-off period that the IRS might have challenged altogether.

But classifying all intangibles as amortizable would increase the tax advantages for business mergers. Although other tax breaks that fueled merger activity have been repealed and today's economy discourages them, they remain a risk in the future. Sen. Paul Simon, Democrat of Illinois, is so concerned about this possibility that he is proposing an amendment to kill tax simplification altogether. He doesn't believe its benefits are worth the risk.

A better approach would be to reject the Simon amendment and permit all intangibles to be written off—as America's principal

competitors do. The next step would be to examine the tax code for any other incentives to mergers and repeal them. Congress must opt for tax simplification by amortizing intangibles, ending an expensive tax war.

Mr. DANFORTH. Mr. President, the reason I want the editorial from the Post-Dispatch put in the RECORD is not just that it is a hometown newspaper for me but the fact that the St. Louis Post-Dispatch is hardly a captive of big business or takeover artists. It is generally considered to be a very liberal editorial page. They have editorialized very strongly in favor of the provision in the bill. And they have editorialized against the amendment that is now offered by the Senator from Illinois.

It has been stated on the floor that at a time of budget problems in our country this is a costly provision. As a matter of fact, Mr. President, it is not. It has been scored by the Joint Committee on Taxation, and it is revenue neutral.

So is the amendment that has been offered by Senator SIMON. It is revenue neutral. This provision does not gain or lose revenue. What it gains is tax simplification. What it saves is lawyer's fees, accountant's fees, and appraiser's fees, and a tremendous amount of time, and a tremendous amount of diversion of resources in this country.

One of the things that I have learned in serving on the Senate Finance Committee is the number of brilliant people who are involved in our tax laws. At any markup of a tax bill, you sit there in the Finance Committee and you look over a room of brilliant people, employees of the Senate, employees of the Joint Committee on Taxation, staff members of Senators, lawyers—all of these people who are fixed on the exact makeup of our tax law, and then you add to that the army of people throughout the country who are fighting the various battles of how to define the tax law, and how to determine what falls in what category.

If there is a misallocation of resources in the United States, it pertains to the interpretation and the enforcement of tax laws. Tax law is complicated, and one of the great complications has to do with the valuation of intangible assets.

Here is the issue. There are various types of intangible assets. Trademarks, trade names, customer lists, knowhow, franchises, patents, and goodwill—all of these are intangible assets.

There are two problems with the current law. The first is that the current law is uncertain as to the useful life of these various intangible assets.

So there is a continuing problem of valuation. How much useful life do we assign to customer lists, to knowhow, to trademarks? What is the useful life? This is a matter that the Internal Revenue Service takes one side on, and the taxpayer takes the other side on, and they go round and round and round, and the lawyers run up the fees, and the accountants run up the fees, and the appraisers run up the fees.

Then there is a second problem in the current state of the law; that is, that all of these various intangible assets are depreciable save one. And the one exception is goodwill. So that the taxpayers, the businesses, follow a practice of trying to undervalue goodwill, $1 valuation if they can get away with it, and overvalue the other intangible assets which are depreciable.

So the two problems again are the lack of definite time, the lack of certainty for the various intangible assets; and second, the fact that there is an exception, goodwill, which is not depreciable, and therefore taxpayers try to get everything out of goodwill, and put it under one of these other categories.

It is chaos. It is chaos. Senator BENTSEN, Congressman ROSTENKOWSKI, and others, attempted to end the chaos and create certainty. So what they did is say we are going to treat all of these intangible assets equally, and we are going to give them all the same useful life; 16 years.

Why 16 years? Why not 15 years? Why not 14 years? Sixteen years, because 16 years was, as found by the Joint Committee on Taxation, the revenue neutral time period. That is what this amendment does. It is designed to create certainty.

It has been said that, well, this creates "takeover mania," and that was the expression that was used time and time again by Senator SIMON in describing the depreciation of goodwill—takeover mania. But that analysis is contradicted by the Treasury Department. Alan Wilensky, the Deputy Assistant Secretary, has written a letter which says that the administration opposes the Simon amendment. Treasury believes that the Simon amendment "would perpetuate the uncertainty and controversy the legislation was intended to resolve."

He further says that "the amendment would preserve the competitive advantage of foreign corporations, many of which amortize goodwill under their home country tax laws, in bidding for businesses with significant goodwill." And then Deputy Secretary Wilensky says:

> We do not believe the intangibles provision of H.R. 11 creates a new tax incentive for acquisitions. In fact, we think it likely that current law encourages acquisitions by aggressive taxpayers, allowing them to profit by overvaluing short-lived intangibles and undervaluing goodwill.

That is the conclusion of Treasury and the exact opposite of the conclusion of Senator SIMON. Treasury believes that the current situation encourages takeovers.

Chairman BENTSEN has pointed out very ably the fact that the so-called merger mania of the 1980's was stock acquisitions. Those were the leveraged buyouts. This provision has nothing to do with stock acquisitions. This has to do with the acquisition of assets. The acquisition of assets were not what were abused in the 1980's. In fact, acquisition of assets, after the 1986 Tax Code, are going to be much rarer than they ever were before because of the prospect of double taxation where assets are required.

Mr. President, this really is the issue of tax simplification. The current situation is unworkable, confusing, chaotic. Why would all of the businesses favor changing this? It is not just to get some tax advantage as was suggested. It is to get them out of the clutches of the lawyers. That is what is involved in the provision that has been designed by Senator BENTSEN.

I might say that, as the chairman has pointed out with his characteristic thoroughness, anticipating the argument that somehow the depreciation of goodwill might have some kind of an effect on acquisitions, he had a hearing on this subject, and we had witnesses—a witness from Germany and a witness from Japan—and the exact question was put to them: You depreciate goodwill. What effect does that have in your country on acquisitions? The answer given was "none at all."

I ask unanimous consent that the letter from Deputy Assistant Secretary Wilensky be printed in the RECORD.

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

THE SECRETARY OF THE TREASURY,
Washington, September 24, 1992.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: This letter responds to your recent letter concerning the provision of H.R. 11 relating to the amortization of intangibles. You asked for our views on the intangibles provision and Senator Simon's proposed amendment of that provision. You specifically asked what impact the Simon amendment would have on efforts to simplify the tax treatment of acquired intangible assets. In addition, you asked whether the intangibles provision contained in H.R. 11 would create a tax incentive for acquisitions.

Under current law, it is necessary to allocate purchase price between goodwill and other intangibles. This results in uncertainty, transaction and administrative costs and frequent and expensive controversies between taxpayers and the Internal Revenue Service. H.R. 11, as approved by the Senate Finance Committee, provides a uniform, 16-year amortization period for purchased goodwill and most other purchased intangible assets. This provision eliminates uncertainty and controversy by treating goodwill and other intangibles in the same manner.

Senator Simon's amendment would exclude goodwill from the class of intangibles eligible for amortization. Other purchased intangibles under this provision would be amortized over 14 years. We oppose this amendment. By retaining the distinction between goodwill and other intangibles, the amendment would perpetuate the uncertainty and controversy the legislation was

intended to resolve. Thus, the amendment would add a new element of complexity to a tax simplification measure. In addition, the amendment would preserve the competitive advantage of foreign corporations, many of which amortize goodwill under their home country tax law, in bidding for businesses with significant goodwill.

We do not believe the intangibles provision of H.R. 11 creates a new tax incentive for acquisitions. In fact, we think it likely that current law encourages acquisitions by aggressive taxpayers, allowing them to profit by overvaluing short-lived intangibles and undervaluing goodwill. The intangibles provision of H.R. 11 would eliminate this incentive.

Please let me know if I can be of further assistance.

Sincerely,

ALAN J. WILENSKY,
Deputy Assistant Secretary (Tax Policy).

Mr. BENTSEN. Mr. President, I yield 5 minutes to the Senator from Minnesota.

Mr. DURENBERGER. I will take a few minutes, Mr. President, to share a recollection and an observation.

I have listed closely to this debate, and as my colleague from Missouri indicated, the debate did not begin here. It had been in the Finance Committee before that. There has been a great deal of concern expressed that if we permit the amortization of goodwill, we are going to encourage a new wave of takeovers and mergers that might even parallel the takeover mania of the 1980's.

I rise basically to question that argument, because, Mr. President, in August 1989 when we were at the height of the takeover mania, when the news of the day was a $20.3 billion offer to take RJR Nabisco private, a $13.5 billion deal for Kraft, or a $5.23 billion offer from Britain's Grand Metropolitan for Minnesota Pillsbury Co., the Finance Committee held a hearing on takeovers. At that hearing I stated the following:

In nearly every hostile takeover and in all leveraged buyouts, the one certain result is that the surviving entity that emerges will be saddled with an extraordinary new debt burden.

In 1982, corporate debt totaled less than $1 trillion. In 6 years, that debt burden had risen nearly 80 percent to $1.8 trillion. By one estimate, the interest payments on that debt can account for 20 percent of these firms' cash flow.

I went on to say, "In a healthy and robust economy such as we have enjoyed in the last 6 years," think back before 1989, "companies may not have a problem servicing that debt. But can these companies afford to continue to service this growing debt if economic growth slows?

Unlike dividend payments that can be suspended in tough economic times, interest on corporate debt must be paid, or else the company faces the prospects of bankruptcy." At that time, I also stated, "Instead of investing for the long term, instead of investing in modernized factories, instead of investing in new products and manufacturing processes, America's corporations and investors are engaging in a feeding frenzy of buying and selling corporations.

"Does it make any sense," I said, "that in 1986, American corporations spent more on mergers and acquisitions, $177 billion, than they spent on new plant and equipment, $141 billion?"

That is the end of the recollection.

But, Mr. President, all of that debt accrued and all of those mergers took place when goodwill was not amortizable. Three years later, after the bankruptcies at Macy's, Bloomingdale's, and a host of others, the 1980's takeover candidates were saddled by debt.

I believe American business has now learned a lesson. The lesson is that the good times do not go on forever. Too heavy a load of debt ultimately leads only one way: To bankruptcy.

Mr. President, I do not believe we are going to see a new wave of takeovers for quite some time. This is the 1990's, and corporate America is paying the price of the excesses of the 1980's. I say this: If there are going to be takeovers of American companies, the Tax Code should not favor foreign takeovers. What the amendment of the Senator from Illinois really is, is an amendment designed to give foreign investors an advantage in taking over American companies. I will repeat that. The Senator's amendment would give foreign investors an advantage against American companies that may enter into mergers.

Mr. President, British-based Grand Metropolitan has been an excellent citizen of Minnesota since its acquisition of Pillsbury. They have done much to restore the vitality of Burger King and its franchises and the Pillsbury Co. But why should a British company be allowed to amortize the goodwill of an American company that it acquires while an American company is denied that opportunity?

Belgian, Canadian, Colombian, Finnish, German, Japanese, Korean, Dutch, Swedish companies are all permitted to amortize goodwill. Why not American companies? Do we want to give Japanese companies, which are permitted to amortize goodwill over 5 years, a competitive advantage in a competition with an American company to buy American company?

So to me, Mr. President, the issue is very simple: If you want to give the Japanese, the Germans, and the British, the competitive advantage in any future bid to buy an American company, then vote for the Simon pro-foreign investment amendment. But if you want a more level playing field for American companies, you should oppose the Simon amendment because it discriminates against our companies.

Mr. President, I yield the floor.

Mr. BENTSEN. Mr. President, I ask unanimous consent that an editorial from the Dallas Morning News entitled Tax Bill be printed in the RECORD at this point.

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

[From the Dallas Morning News, Sept. 15, 1992]

TAX BILL: SIMPLIFICATION IS THE KEY

Next week, the Senate is scheduled to take up a tax bill that has created a predictable share of the controversy. Not the least of which has been the debate over how to structure enterprise zones, which are intended to assist economically strapped areas.

But a proposal that is receiving near-universal support in the current tax bill is the depreciation of intangible assets. Now, before you decide accounting remedies are too much to consider before morning coffee, think again.

As the American economy moves from its manufacturing base to one that emphasizes service industries, the nation's tax code must follow along. In short, that's the aim of the current amendment to simplify depreciation of such intangible assets as a company's customer list.

The nation's tax laws have long been specific about depreciating tangible assets, such as a company's building. But amortizing intangibles like accounts receivables, data bases, broadcasting rights and, importantly, a company's good will are subject to dispute. The result has been what the General Accounting Office terms "one of the oldest controversies between taxpayers and the Internal Revenue Service."

In fact, the GAO says, the IRS has challenged about 70 percent of taxpayer claims about whether an asset had a useful life or was merely part of the company's good will. The result has been, in the GAO's estimation, "costly disagreements" and "inconsistent treatment."

To change this situation, and to move the American economy forward, the Senate's legislation will allow depreciation of purchased intangibles over a 16-year period. So if a company is purchased, the purchaser will be able to amortize customer lists as well as bricks and mortar.

These reforms may sound technical and perhaps irrelevant to daily life. But they are the stuff of which a more competitive United States will be comprised. Instead of wasting time and money over dubious and non-productive lawsuits, companies can be freed from restrictive and confusing laws.

The changes also would recognize the new service orientation of the American economy. That's a plus, and the reforms, which have moved through Sen. Lloyd Bentsen's Finance Committee, deserve support. They seek to simplify the tax code, as well as move the nation forward. Those aims are hardly inconsequential.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself as much time as I may consume.

My distinguished colleague, Senator BENTSEN, said he started off skeptical about this, and Mary Naylor and Sarah Smith, two fine staff people, will tell you I started off skeptical when this idea was first approached. And then I started reading, and the more I read, the more incredible this amendment became.

When my distinguished colleague from Texas says stocks will rise and they pay an income tax on that, when you recognize that in Philip Morris, or Kraft, for example, or Time-Warner, 80 to 90 percent was goodwill, there is just no way that an appreciation in stock is going to make up for that. In terms both of what Senator BENTSEN and what Senator DANFORTH had to say about stock and about acquisition of stock, therefore, this is not a great big break and a great boon to these mergers and acquisitions. What happens is, you buy the stock of a company and then you sell off corporations which that parent corporation owns. You sell off these companies and then you get the goodwill. It also encourages debt financing, rather than equity financing.

Senator BENTSEN says other factors are more important in acquisitions and mergers, rather than this tax break.

I agree with that. There is no question about that. But why give an added incentive to corporate mergers and takeovers? I just do not understand it.

Senator BENTSEN says that I am inconsistent in suggesting certain intangibles can be written off. I have never suggested that we should not be able to write off any intangibles. I just do not want to give away the store.

The reality is, for example, Senator DANFORTH mentioned patience. Clearly, there is a time factor here on this intangible. That ought to be written off. And the Finance Committee, with all its ability and its able staff can do what we do with intangibles, and that is determine what is a sensible writeoff for those things.

A covenant not to compete, obviously, has value to a corporation. That ought to be written off. And as far as how you draw the line, let those who write our tax laws or the IRS determine through regulation where to draw the line. But do not just give up totally and say we are going to give you the biggest Christmas gift that you received yet in terms of corporate mergers.

My distinguished colleague from Missouri says it is revenue neutral—and I would like to have his attention here if I may, and he is listening to me, I am pleased to say—it is revenue neutral for this immediate period through 1997. But listen to what the Joint Tax Committee says:

> The new tax deductions accorded goodwill and going concern value in the current version of H.R. 11 cause a long-run revenue decrease * * *.

Listen to what the senior specialist in economic policy for the Congressional Research Service has to say:

> If we express these numbers in 1997 income levels, the final year of the budget horizon, the revenue cost would probably be in excess—

And I want to get the attention of the Senator from Missouri again here now. Let me just repeat this from CRS:

> If we express these numbers in 1997 income levels, the final year of the budget horizon, the revenue cost would probably be in excess of $2 billion per year. It is possible that the loss could be smaller, but it is more likely that the loss would be even larger.

He describes this as tax simplification. The GAO report suggests:

> If we permit the writing off of goodwill, then what goes into creating goodwill, such as advertising, we are going to have to take another look at that.

Senator DANFORTH quotes the St. Louis Post Dispatch. Even the Post Dispatch can be wrong once in a while. But I point out that this merger mania is not something that has not afflicted the newspaper business. If there are any reporters listening to us at this hour of the night, they know what has happened. In St. Louis, this has happened. The Pulitzer Co. has purchased a number of newspapers around the country. We have fewer and fewer owners of the newspapers of this country.

I do not regard that as a healthy trend. I happen to be a journalist by background, but this bill, as it is now written, is going to encourage that. And it does not surprise me that a lot of the newspapers who are involved in buying up other newspapers like this particular provision of the law.

When he says my amendment is also revenue neutral, in fact, even for this initial period, it creates $631 million in additional assets for the budget.

When Senator DANFORTH refers to me as talking about takeover mania, I was quoting financial house after financial house after financial house. PAUL SIMON does not write for Business Week magazine. I am not the author of those articles from the various enterprises.

And then, when he said why would all the businesses favor this and suggests it is because it would reduce litigation, obviously we ought to change the law, we ought to improve the law. We ought to reduce the litigation. But as to why all the businesses favor this, my guess from a study of this—and I have a number of hours on this—my guess is businesses favor this not because of the litigation factor, but because of the bonanza factor here.

And as far as foreign investors getting a break, as my colleagues from Minnesota suggested, they have special laws to discourage the very kind of merger mania that we face here.

The fundamental question again, Mr. President, is: What should we subsidize as a nation? I believe we should subsidize business along with subsidizing Head Start and things like this, but we ought to subsidize business through investment tax credits. We ought to say to Monsanto, for example, a good St. Louis corporation that Senator DANFORTH is familiar with, "When you do research, we are going to give you added breaks."

Those are the kind of breaks that we should give people. But if Monsanto or any other corporation wants to just gobble up another corporation, that should not receive a special tax break.

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

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Illinois has 5 minutes and 17 seconds, and the opposition has 22 minutes and 57 seconds.

Who yields time?

Hearing no order, the Chair will rule that the time will be charged against both parties until someone seeks recognition on the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, first, the Joint Committee on Taxation will give Congress 5-year revenue estimates. The joint committee does not provide revenue estimates beyond 5 years. There are many times when I wish we could have factored in the long-term effects of changes in the tax law. Many times we have attempted to represent to Members of the Senate that a little revenue loss today would create revenue bonanzas in the future, and we were not allowed to avail ourselves of such arguments.

The way we deal with the budget is in specific 5-year timeframes.

As a matter of judgment by the Joint Committee on Taxation, this provision is revenue neutral. And, as a matter of fact, so is the amendment that is offered by the Senator from Illinois for this reason: The Senator from Illinois provides that goodwill shall not be deductible. Then he proceeds to spend whatever revenue he would pick up doing that by reducing the useful lives of the other intangible assets from 16 years, which is in the bill, to 14 years.

So this amendment is not one that is a great blessing for the taxpayers. It is one that proceeds to remove the deductibility for goodwill and then spend the revenue somewhere else. And in doing that, in providing for no depreciation for goodwill and shorter useful life for other intangible assets, the Senator from Illinois simply reconstitutes the existing problem in the Internal Revenue Code which has created the chaos as far as the taxpayers are concerned, and the bonanza as far as lawyers and accountants are concerned; namely, what the Senator from Illinois does is to provide added incentives for shifting the valuation of intangible assets from goodwill to something else. That is the same box we are in now.

So the net effect of the Senator's amendment is to gut the provision that is now in the bill. And, as I said earlier,

the provision in the bill is the one major accomplishment with respect to tax simplification that is in the bill.

If Senators believe in tax simplification, they should vote against the amendment offered by the Senator from Illinois. If the Senators do not care about tax simplification, if Senators believe that people such as the St. Louis Post Dispatch editorial page and Senator BENTSEN and Mr. ROSTENKOWSKI and others are countenancing some sort of corporate shenanigans and ripoffs, then they should vote with the Senator from Illinois.

Mr. METZENBAUM. Will the Senator from Missouri yield for a question?

Mr. DANFORTH. I yield the floor.

I will be happy to entertain questions, if you want to use the time.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to inquire of the Senator from Missouri with respect to the tax bill without it being charged to either side for a period not to exceed 5 minutes.

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SIMON. Mr. President, I yield 3 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. I thank the Senator from Illinois.

Is it not a fact that the only way you can claim that this bill is revenue neutral, and it is admitted, is because it provides for settlement of cases that are pending at 25 cents on a dollar—and as the Senator from Missouri indicated before he thought it was 75 cents on a dollar and so did I, but it is 25 cents on the dollar—which means that although you cash in, the Government will be giving up 75 cents of each dollar when the settlement is made?

So it is one of those things where we get the cash today and therefore you think that you have made some headway, but the reality is that you have given up 75 cents of every dollar.

And these are claims filed not by individuals. These are claims that are pending by the IRS. And you are going to let people settle those for 25 cents on the dollar and then you have the audacity to claim that by getting those dollars in, this bill is revenue neutral.

I say that when the Joint Tax Committee gives us that kind of figures, it is specious reasoning on their part and they tell us only a part of the story and I do not accept it.

(Mr. WELLSTONE assumed the chair.)

Mr. DANFORTH. Mr. President, well my response—I have more time, so I will be happy to take this on my time.

Mr. METZENBAUM. I thank the Senator.

Mr. DANFORTH. Mr. President, the short answer to the Senator's question is, no. No, this settlement provision which is in the bill is not touched by this amendment.

So the point made by the Senator from Ohio is simply not correct.

What we are talking about here is the deductibility of goodwill, which has caused real chaos as far as lawyers and accountants and appraisers are concerned. And that provision is really not related at all to this 25 percent, 75 percent issue.

There is another provision in the bill which I think the Senator is referring to which is designed to settle many, many complicated cases that are now pending, settling on a basis that is mutually satisfactory to the Treasury and apparently to most taxpayers, by providing that taxpayers who are now claiming, say, $100 on a tax return as a deduction, in order to settle the dispute the taxpayer forfeits $25 of that claim. That is the settlement provision. That does create revenue. That produces revenue for the bill.

If that were taken out of the bill, we would have a big problem finding offsetting revenues, because this is a revenue producer.

But that is not the subject of the amendment that has been offered by the Senator from Illinois.

Mr. METZENBAUM. That is part of the basis on which you claim that this provision is revenue neutral.

Mr. DANFORTH. No, that is not correct.

Mr. METZENBAUM. How do you get it to be revenue neutral? Where do you get the pickup? How do you get the pickup when you permit goodwill to be written off under your proposal in the law?

Mr. DANFORTH. Because right now, as the Senator knows, there is no specific useful life for intangible assets.

Mr. METZENBAUM. We are just talking about goodwill.

Mr. DANFORTH. Therefore, what we did was to say to the Joint Committee on Taxation, you name the figure; name the number; pick the number of years.

What we want is not chaos. What we want is not confusion. What we want is not taxpayers arguing forever on what the useful life is.

We want a fixed useful life which, in the best judgment of the Joint Committee, is the revenue neutral number. The Joint Committee came up with this specific number 16 years.

Mr. METZENBAUM. That is the point that I am making. That is specious reasoning. Because by permitting the payout over 16 years, the deductibility for 16 years, that does not pick up any money at all. You only pick up the money by permitting the settlement of the cases at 25 cents on the dollar.

Today, there is nothing to argue about. You cannot deduct goodwill today. You cannot get zip, zero, anything. You cannot get anything deducted under the present law.

What this is doing is making it possible to take about $400 billion in goodwill and suddenly makes it deductible. It is as if you were saying to an average home owner that you can deduct the air you breathe and the environment in which you live. This goodwill is a nothing. It does not have to do with some claims having to do with lists or things of that kind that are arguably assets.

This is talking about nothing but air, plain good will. That is what is to be deducted under this.

Mr. DANFORTH. Mr. President, under current law, trade law, all intangible assets—trade names, customer lists, know-how, franchises, patents and others—all of those are deductible.

Mr. METZENBAUM. That is correct.

Mr. DANFORTH. Good will is not deductible.

Mr. METZENBAUM. That is correct.

Mr. DANFORTH. Intangible assets, all of them could be called air. What is happening now, Mr. President, if I could respond, what is happening now is first of all taxpayers are putting in whatever number they care to for the useful life of intangible assets. Second, they are attempting to shift the valuation of their intangible assets from goodwill to other intangible assets. It has caused a nightmare with respect to the administration of the tax laws. And what I am saying is without regard to this 25 percent issue—25 percent of the deduction issues—without regard to that, this provision in revenue neutral. That is what we asked the joint committee to come up with. That is why the joint committee came up with 16 years.

If we did not have this 25 percent settlement issue, this whole matter would be revenue neutral.

The allowing for taxpayers and the Treasury to settle these complex fact cases creates an influx of revenue to the Treasury to the tune of more than $2 billion. So that provision that the Senator has criticized raises revenue. Putting it all together we raise $2 billion. But that part of the issue that is being challenged by the Senator from Illinois is revenue neutral. It is revenue neutral in the bill and the amendment that the Senator from Illinois offers is also revenue neutral because he reduces the useful lives of the other intangibles.

Mr. METZENBAUM. I take strong issue with my colleague from Missouri at this point. Because I understand the distinction he is making between the settlement of the old cases. But the fact is that the Joint Tax Committee claims that the spelling out of procedures with respect to trademarks and registrations and various lists and that type of thing—that is not going to pick up that kind of money. And I just have to say to the Joint Tax Committee, I do not know where you could come up with that kind of figure.

I think we find ourselves here in this body being bewildered and baffled by

the Joint Tax Committee that oftentimes comes up with figures where you say, "But it just does not stand to reason. How can you possibly pick up money when you are providing for additional tax deductions that do not exist today?"

That is what we are told in connection with this matter. There is going to be money picked up by providing tax deductions for goodwill generally. It does not exist today. And for the life of me I cannot understand and the American taxpayer cannot understand how you can possibly arrive at that kind of conclusion; that by providing additional tax deductions it is going to produce more dollars for the Treasury.

I am not seeking to produce more dollars. But I say this amendment is going to cost $2 billion a year if not more. I think that is the reason so many of the business organization are so strongly for it. They are certainly not seeking to increase their tax burden and I would not seek to increase their tax burden.

On the other hand, I would oppose——

Mr. DANFORTH. Mr. President, I have stated the analysis of the Joint Committee on Taxation. It is simply contrary to the analysis of the Senator from Ohio.

Mr. CHAFEE. Let us vote.

Senator CONRAD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. Might I ask the Senator from Missouri, although I am on the other side of this issue, if I might have 4 minutes?

Mr. BENTSEN. How much time do we have left?

The PRESIDING OFFICER. The Senator has 10 minutes and 35 seconds.

Mr. BENTSEN. How much do the opponents of the amendment have?

The PRESIDING OFFICER. The opponents have 3 minutes and 21 seconds.

Mr. BENTSEN. You are asking for time in opposition?

Mr. CONRAD. My understanding was the Senator from Illinois only had 2 minutes.

Mr. BENTSEN. Good.

Mr. SIMON. Mr. President, I will yield 1 minute and 27 seconds of that 3 minutes to the Senator from North Dakota.

Mr. BENTSEN. Just because of my great affection for the Senator from North Dakota, I will yield him a minute and 30 seconds.

Mr. CONRAD. I thank both Senators.

Let me just say, as a former tax commissioner, as former chairman of the Multistate Tax Commissioners, in examining this issue I must conclude, this is lousy tax policy.

Let us try to simplify this very quickly.

If a company buys another company and the tangible assets of the company are $50 million but the sales price is $100 million, you have $50 million that might be attributed to other intangible assets or to goodwill.

Goodwill sometimes is called blue sky.

What this provision provides is that now, for the first time, we are going to allow the blue sky to, in effect, be depreciated.

Mr. President, it makes no sense. We allow amortization or depreciation because something has a limited life. It wears out. It loses value. That is not the case with respect to goodwill. There is no evidence that it wears out. There is no evidence there is limited lifetime.

So I say to my colleagues, let us not make this mistake.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. BENTSEN. I yield 5 minutes to myself. I say to my friend from North Dakota, he has not bought many companies and sold many companies. This idea is not going to add a great increase in takeovers, by this kind of approach. That was my concern when I first started looking at this, the fact you were going to amortize goodwill, because the last thing I want to see is a vast increase in takeovers and certainly going back to the LBO approach to this type of thing.

I have done everything I could from the Finance Committee side to discourage that.

So I looked at this and then I began to better understand it. First, most of these purchases are of stock. If you have any appreciation of the value of that stock—because of this kind of legislation, you might have some—I think it would be very marginal. But the fellow selling that company, he understands that, too, if it has a value. So he increases the price for it. And then if he sells the assets of that company he then pays the tax right up front. And, in the vast majority of those cases, what the other fellow finally gets in the way of a company and any amortization he gets, he is going to get less back in tax return. And all studies I was able to find were giving me that kind of a presentation, which I really had not thought of in the beginning.

That is what turned me around on this one and I decided it was well worth it to get the kind of simplification we need, the kind of certainty that we need; to cut out all these costs of lawyers, accountants, and auditors and the incredible amount of endless litigation.

I heard someone a while ago—I guess it was my good friend from Illinois—talking about how we ought to approach this through regulation. How many different types of assets were listed in that situation, as intangible assets? We had 159 in the General Accounting study of it. So that is what we are facing.

The other thing we did, we held a hearing in the Finance Committee and we had witnesses from Japan and we had them from Germany, trying to determine what had happened there. Because in those countries they amortize goodwill and they amortize it in a shorter period of time than we do.

So the incentive is all the more so, supposedly, if it works that way, to buy that kind of a company. And we said, did this increase takeovers? Did it become a major consideration in takeovers? And the witness said it did not. It did not do so.

Time and time again, the things that influence you buying a company are other factors. What kind of a labor force could you have. How educated is it. What is the demand for the product. What kind of research and development do they have, in bringing on new products. What does it cost in the way of money that is borrowed. What is the availability of capital for it? Those are the major motivating reasons when you are talking about buying another company, making an acquisition.

So I finally came to the conclusion that there is a much better benefit in trying to get companies more productive, our prices more competitive, and our costs less in operations, if we could simplify, simplify the intangibles. And I decided what they had done on the Ways and Means Committee was a major improvement in the laws of our country. That is why I finally endorsed it, went for it. We went a little longer on the depreciation period; we stretched it out to 16 years where they had done it for 14 years. I think overall it is good legislation. I think it will help make us more productive in the country and save us in a lot of other ways.

I urge defeat of the amendment.

Mr. CONRAD. Will the Senator yield for a question?

Mr. BENTSEN. Yes.

Mr. CONRAD. Let me just preface it by saying so much of what the Senator says I agree with, that there is, no question, a very difficult problem with respect to the handling by the IRS of this question. And while I have not been involved in buying and selling many companies, I can tell the Senator I have been involved in the question of tax policy with the buying and selling of hundreds of companies.

I just ask if the Senator disagrees with the observation by Leo Herzel and William Schmalz, who are partners in a law firm supporting the goodwill provisions which are in this legislation, who wrote in the Financial Times on January 30, 1992: "An important tax bill pending in the U.S. Congress," referring to the one that was before the House, "would permit depreciation of intangibles, including goodwill, for tax purposes. This would appear to eliminate a major U.S. barrier against takeovers."

Mr. BENTSEN. Let me answer that.

Mr. CONRAD. I ask the Senator if he disagrees with that.

Mr. BENTSEN. I have a hunch the Senator is talking on my time, so let me use my time to answer that.

This is from Goldman, Sachs. It is one of the most sophisticated investment firms in the United States, if not the world. This is the way they advise a client in a takeover in that regard. They refer to the Rostenkowski bill on intangibles and goodwill: "However, it will not be helpful in cases of acquisitions of public companies since these are usually stock acquisitions. In such cases the old rules will apply unless the acquiring company elects section 338 and writes up the asset value of the acquired company, pays the asset on the writeup up front"—as I was saying earlier in this debate—"and can then deduct the amortized sums, but such an election is highly unlikely since it is not economical."

So overall the net result is I really do not see this encouraging takeovers, but an enormous payoff in simplification, certainly in the handling of intangibles and goodwill.

I urge defeat of the pending amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. I shall be very brief because I only have 2 minutes remaining. I wish he were on the floor right now. But the Senator from Missouri was factually incorrect in every one of his statements in terms of what has happened. The Senator from Ohio is correct when he said how do they get income out of this? It is because you are giving the store away at 25 cents on the dollar on current litigation regardless of the merit of that litigation. That is how the income.

And then, when the Senator from Missouri says that my proposal is revenue neutral, the reality is, because we knock that out, it saves $631 million that we use to subsidize takeovers. That is what the Joint Tax Committee says.

When the Senator from Missouri says the Joint Tax Committee does not make projections beyond, they do not make specific projections, but the Joint Tax Committee says, and I have the letter from Harry Gutman here:

> The new tax deductions accorded goodwill and going concern value in the current version cause a long-run revenue decrease.

And the Congressional Research Service, their senior specialist in economic policy:

> "If we express these numbers in 1997 income levels, the final year of the budget horizon, the revenue cost would probably be in excess of $2 billion per year. It is possible that the loss could be smaller, but it is more likely that the loss would be even larger.

Mr. President, we have to decide what we want to subsidize in this country. I want to subsidize education. I want to subsidize corporations that put money into research, buy equipment that modernizes their plants. I do not want to subsidize corporations that use their resources just to gobble up other corporations, and that is what this bill does without my amendment.

Mr. BENTSEN. Mr. President, just 2 minutes to address that point.

First, let me repeat again what I had stated earlier in the debate, what the Treasury testified at the Finance Committee's hearings on this legislation in response to my question on this very point, and this is Treasury speaking: "What we attempted to do, working with Congress and the Joint Tax Committee in developing the original legislation, was to ensure that to pick a period, namely 14 years," in the House version, "that would be revenue-neutral over the long term. We have certain budget conventions that we use, but when you are making a change of this sort, you do not want to solve your problems in a 7-year window and then leave yourself with a mess in the outyears. So, in setting the 14-year period, we believe that that would be essentially revenue neutral over the long term."

And I would point out, as I said earlier, that the Senate version goes for a longer period of 16 years. That is further stretching the writeoff.

Mr. BOND. Mr. President, I oppose this amendment because it would leave the provision regarding the amortization of intangible assets meaningless. It would deprive all businesses in all segments of industry a chance for real and meaningful simplification of an extraordinarily complex area of tax law.

Mr. President, the Senators from Illinois and North Dakota have asserted that this provision would constitute "a major tax giveaway for corporations." There are two elements to this assertion: First, that it will result in a new merger boom; and second, that the provision will increase the deficit.

First, Mr. President, as far as a merger boom is concerned, this provision is not relevant to most of the acquisitions that have taken place since 1986 and will not be relevant to many future acquisitions. For the amortization of intangibles to be an issue, an acquisition must be treated as an asset acquisition for tax purposes, rather than a stock acquisition. Since 1986, most acquisitions have been of the stock of a company, rather than of its assets.

It is true that the provision would provide a writeoff for goodwill, which is not currently deductible. In return, however, other tangible assets would be written off over a substantially longer period than their useful lives would otherwise warrant. In other words, a balance is created by the bill. Taxpayers will not have an incentive to characterize goodwill as an intangible asset just to get a deduction, because all intangibles, goodwill, or other intangibles such as customer lists or covenants not to compete, would get the same 16-year writeoff.

In a number of the acquisitions that took place in the 1980's, the acquiring companies were able to write off the intangible assets they purchased in 5 or 6 years. Under this bill, all intangible assets would be written off over 16 years. The bill doubles, or more than doubles the normal writeoff period for a number of assets, yet the Senator from Illinois is saying the bill will encourage takeovers.

Second, regarding this provision's relationship to the deficit, the provision as it appears in the bill today was designed by the Joint Committee on Taxation to raise revenue. Not to be revenue neutral. Not to lose revenue. But to raise revenue.

Finally, Mr. President, the bill will simplify the tax law. Assistant Treasury Secretary Goldberg told the Senate Committee on Finance last April that the intangibles provision "is the litmus test of our commitment and ability to achieve broad-based simplification of substantive tax laws."

I agree with Mr. Goldberg; by providing a workable definition, from a tax perspective, of what is an amortizable intangible asset, the legislation will allow taxpayers to conduct their business with more certainty. The Senator from Illinois' assertion that "the IRS has spent the last 6 years in tax court" may be true, but it doesn't tell the whole story: the court battles have been waged not because taxpayers are being overly aggressive or abusive, but because no one knows what the law is.

Taxpayers and the IRS have been in both negotiations and litigation on this issue because it is an area of the tax law that is murky. I believe that this provision will resolve the murkiness, and provide much needed simplification in this area. Distinguishing goodwill from other intangible assets in a precise way is at the heart of the IRS-taxpayer controversies. Deleting goodwill from this provision will mean such controversies continue.

Mr. President, I oppose the amendment and urge all of my colleagues to vote against the Simon amendment.

Mr. DASCHLE. I intend to vote against the amendment offered by my colleague from Illinois, Senator SIMON. However, I would like to make a few comments about the concerns he has raised because I think he is right to raise them.

Like Senator SIMON, I have thought deeply about the potential impact of allowing goodwill to be amortized, both with regard to the wisdom of providing a new tax benefit for businesses and with regard to the possibility of encouraging future takeover activity.

As to the merits of allowing businesses to amortize goodwill, there are several points that should be consid-

ered. First, it is important to look at the intangibles provision as a whole. It is true that businesses in the United States have never been able to amortize goodwill up until now and that this bill would allow if for the first time. But, the bill also would require a host of other assets to be amortized over a longer period than they have in the past. This represents a cost to business, in some cases a substantial cost. Yet, businesses have told us that they are willing to accept this trade-off because the simplicity of the proposal will eliminate the extraordinary expense and uncertainty of litigating intangible asset issues.

Second, I am told that reducing litigation in this area will result in savings for the Internal Revenue Service on the order of billions of dollars a year. This is one of the most litigated issues in the Tax Court, and the resources freed up by the intangibles proposal in H.R. 11 could be allocated to pursuing tax abuses in other areas.

A third point to consider is that most of our leading competitors allow goodwill to be amortized. The distinguished chairman of the Finance Committee has discussed this fact and enumerated the many countries that allow similar treatment for goodwill. While their tax systems differ substantially from each other and from that of the United States, the existence of this tax benefit in other countries does provide some assurance that it is the right thing to do from a tax policy perspective.

Of perhaps greater concern to me has been the potential for increased takeover activity as a result of allowing goodwill to be amortized. One cannot help but question whether this will lead businesses to inflate the value of goodwill, just as the value of many businesses were inflated in the years prior to the stock market crash of 1987.

I am told that almost all of the takeover activity in the 1980's involved stock acquisitions and that the provisions of the tax bill before us apply only to asset acquisitions. Also, many other factors played a role in encouraging the takeovers of the past decade, most of which do not exist today. These facts are certainly encouraging.

The Congressional Research Service has studied the takeover issue. The CRS report concluded that there is little likelihood of a substantial increase in takeovers as a result of allowing goodwill to be amortized. I understand that the General Accounting Office, too, has studied this area of the tax law and, in fact, recommended a similar approach to that contained in the bill before us.

All of this is reassuring. Still, if we are going to move forward with this proposal to simplify the tax treatment of acquired intangible assets and allow goodwill to be amortized, I feel strongly that we must not lose sight of this concern about takeovers. It is critical that we monitor the situation after the provision becomes effective for increased takeover activity and other undesirable results.

A provision of the House version of this proposal calls for the Department of the Treasury to study the impact of the intangibles simplification provision on takeover activity and report its findings to Congress. I urge my colleagues who will serve on the conference committee on this bill to retain the Treasury study provisions in the final version of the bill.

Mr. BENTSEN. Mr. President, we are prepared to yield back the remainder of the time.

Mr. SIMON. I yield back the remainder of my time.

Mr. CHAFEE. If I might ask the chairman, would not innumerable hours of IRS agents' time be saved if the bill, as proposed, went through as opposed to the adoption of the amendment? Is this not one of the most contentious points in the IRS?

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

Mr. BENTSEN. My time has expired?

The PRESIDING OFFICER. That is correct.

Mr. BENTSEN. I guess I can nod yes.

The PRESIDING OFFICER. All time has expired.

Mr. BENTSEN. Mr. President, I move to table.

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

Mr. BENTSEN. And I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Tennessee [Mr. GORE], the Senator from North Carolina [Mr. SANFORD], and the Senator from Colorado [Mr. WIRTH] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] and the Senator from California [Mr. SEYMOUR] are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 75, nays 19, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—75

Akaka	Bentsen	Bond
Baucus	Biden	Breaux
Brown	Gramm	Murkowski
Bryan	Grassley	Nickles
Bumpers	Harkin	Nunn
Burns	Hatch	Packwood
Chafee	Hatfield	Pell
Coats	Heflin	Pressler
Cochran	Hollings	Pryor
Cohen	Inouye	Reid
Craig	Johnston	Robb
D'Amato	Kassebaum	Rockefeller
Danforth	Kasten	Roth
Daschle	Kerrey	Rudman
Dixon	Kohl	Sasser
Dodd	Lautenberg	Shelby
Dole	Lieberman	Simpson
Domenici	Lott	Smith
Durenberger	Lugar	Specter
Exon	Mack	Stevens
Ford	McCain	Symms
Fowler	McConnell	Thurmond
Garn	Mikulski	Wallop
Glenn	Mitchell	Warner
Gorton	Moynihan	Wofford

NAYS—19

Adams	DeConcini	Metzenbaum
Bingaman	Graham	Riegle
Bradley	Jeffords	Sarbanes
Burdick, Jocelyn	Kennedy	Simon
Byrd	Kerry	Wellstone
Conrad	Leahy	
Cranston	Levin	

NOT VOTING—6

Boren	Helms	Seymour
Gore	Sanford	Wirth

So the motion to table the amendment (No. 3174) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

AMENDMENT NO. 3176

(Purpose: to provide through an election process, Alaska Native Corporations standing to pursue all administrative and litigation rights with regard to Internal Revenue Service determinations concerning the sale of net operating losses pursuant to current law and to offset revenue losses associated with this amendment by increasing the interest rate on tax deficiencies for cases in which such an election has been made)

Mr. STEVENS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for himself and Mr. MURKOWKSI, proposes an amendment numbered 3176.

Mr. STEVENS. 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 in the "Tax Simplification" title of this bill, add the following new section:

SEC. . STANDING FOR CERTAIN TAXPAYERS WITH REGARD TO SALE OF NET OPERATING LOSSES.

(a) Subsection (c) of section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) is amended to read as follows:

"(c) SPECIAL ADMINISTRATIVE RULES.—

(1) INCOME INCLUDED IN NATIVE CORPORATION RETURN.—At the joint election of a Native Corporation and a corporation (referred to in this subsection (c) as the "buyer corporation") with which the Native Corporation entered into a transaction permitted under section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 (referred to in this subsection (c) as a "Native Corporation transaction"), income assigned, transferred or otherwise made available by the buyer corporation through the use of a corporation (referred to in this subsection (c) as the "profit subsidiary") by reason of such transaction for a period in which the profit subsidiary qualified as a member of the affiliated group of which the Native Corporation was the common parent shall be included in the taxable income of the Native Corporation affiliated group solely for purposes of section 6212 of the Internal Revenue Code.

"(A) ELECTION.—The election under this subsection (c) for the taxable year to which the election relates shall be made no later than 120 days after the date of enactment of this amendment. The election shall be made by filing with the district director for the Anchorage district office of the Internal Revenue Service a written statement signed by responsible officers of the Native Corporation and the electing buyer corporation that:

"(i) identifies the Native Corporation, the profit subsidiary, and the buyer corporation (and their taxpayer identification numbers) and states their agreement to make the election provided in this subsection (c);

"(ii) states the amount of income assigned, transferred or otherwise made available to the profit subsidiary for the taxable year by reason of the Native Corporation transaction;

"(iii) if profit subsidiaries related to a buyer corporation other than the electing buyer corporation were members of the affiliated group of which the Native Corporation was the common parent, describes the order and the amount of the losses and credits of the Native Corporation affiliated group that were used to offset the income of each profit subsidiary;

"(iv) states the agreement of the buyer corporation to consent under section 6501(c)(4) of the Internal Revenue Code to extend the periods of limitations for assessment and collection solely with respect to the income of the profit subsidiary for the affected taxable period(s) to a date not less than 180 days after the date the tax liability for the taxable year in which the Native Corporation transaction occurred is finally determined; and

"(v) the Native Corporation and the buyer corporation agree that the Service is authorized to make any refund of any overpayment that is determined to be due, jointly to the Native Corporation and the electing buyer corporation.

"If a Native Corporation has engaged in multiple Native Corporation transactions, such election shall be independently made by each buyer corporation on separate written statements. A buyer corporation that elects under this provision must so elect for all Native Corporation transactions with the particular Native Corporation with whom the election is made for which the statute of limitations for assessment is open.

"(B) TAXABLE RATE.—Notwithstanding section 11 of the Internal Revenue Code, any income of the profit subsidiary that is subject to the election provided in this subsection (c) shall be taxed at the rate that such income would have been taxed if it had been included in the return of the buyer corporation for the taxable year from which such income was assigned, transferred or otherwise made available. Solely for purposes of issuing a notice under section 6212 of the Internal Revenue Code to a Native Corporation for a Native Corporation transaction for which an election has been made under this subsection (c), the tax may be computed by applying the maximum corporate rate under section 11 of the Internal Revenue Code.

"(2) TREATMENT OF NATIVE CORPORATION AS COMMON PARENT AS SOLE AGENT.—The common parent of an affiliated group which includes a Native Corporation that elects under subsection (c)(1) shall be the sole agent for the profit subsidiary for purposes of the Native Corporation transaction for the period of affiliation.

"(3) COLLECTION OF TAX FROM BUYER CORPORATION.—For purposes of this subsection, the amount of any tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary shall be paid by and be collectable from the profit subsidiary and the buyer corporation for the taxable year for which income was assigned, transferred or otherwise made available by the buyer corporation in connection with the Native Corporation transaction.

"(4) PAYMENT OF TAX BY NATIVE CORPORATION.—If, after the election provided in subsection (c)(1) is made, the Native Corporation pays all or any part of the tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary, such payment shall be deemed to be a payment by the buyer corporation for the taxable year for which such income would otherwise have been included in the buyer corporation's return if the election provided in subsection (c)(1) was not made.

"(A) FILING OF REFUND CLAIM.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of sections 6402 and 6511 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attributable to the income of the profit subsidiary and shall be entitled to file a claim for refund as the taxpayer with respect to any taxes, interest, additions to tax, penalties or other amounts attributable to the income of the profit subsidiary.

"(B) FILING OF REFUND SUIT.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of section 7422 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attributable to the income of the profit subsidiary, and as the plaintiff for purposes of 28 U.S.C. section 1402, and shall be entitled to file and maintain a proceeding in court as the taxpayer for the recovery of such amounts.

"(C) REFUND OF OVERPAYMENT.—In the event that an overpayment is determined to be due, whether by final administrative or judicial decision, with respect to a Native Corporation transaction for which an election is made under subsection (c)(1), the Native Corporation shall be treated as the person who made the overpayment within the meaning of section 6402(a) of the Internal Revenue Code. Notwithstanding any law or rule of law, including the preceding sentence, any refund of such overpayment may be made jointly to the Native Corporation and to the electing buyer corporation, as agreed to under paragraph (A)(v) of subsection (c)(1).

"(5) PARTICIPATORY RIGHTS OF ELECTING BUYER CORPORATION.—Any buyer corporation that makes an election under subsection (c)(1) shall have the right to—

"(A) submit a written statement and participate with the Native Corporation in any administrative proceeding relating to any proposed adjustment regarding a Native Corporation transaction for which an election has been made; and

"(B) file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the Native Corporation involving a proposed adjustment regarding such a Native Corporation transaction.

"All written notices or other reports issued by the Secretary or his delegate with respect to such a Native Corporation transaction shall be issued to the Native Corporation, and it shall be the obligation of the Native Corporation to provide copies thereof to the electing buyer corporation.

"(6) FINAL DETERMINATION OF ISSUES.—All issues with respect to the Native Corporation transaction with respect to which an election is made under subsection (c)(1), including the applicability of any interest, addition to tax, penalty or other amount, shall be determined by administrative or judicial decision with respect to the consolidated return of the Native Corporation affiliated group.

"(A) Upon such determination, any income of the profit subsidiary that is not offset in the Native Corporation transaction shall be reported on the buyer corporation's return as if it were originally reported thereon and subject to all adjustments, including net operating loss or other carrybacks, to which such income would otherwise be subject.

"(7) NO EFFECT ON NONELECTING CORPORATIONS.—The absence of an election by a Native Corporation and a buyer corporation with respect to a Native Corporation transaction shall not restrict the authority of the Secretary of the Treasury or his delegate to settle or litigate with any nonelecting buyer corporation with respect to any issue relating to such a transaction.

"(A) RIGHTS OF NATIVE CORPORATION.—For any such Native Corporation transaction for which no election is made under subsection (c)(1), the Native Corporation shall have the right to submit a written statement and participate with the buyer corporation in any administrative proceeding relating to any proposed adjustment regarding such Native Corporation transaction; and to file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the non-electing buyer corporation involving a proposed adjustment regarding such Native Corporation transaction.

"(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitations is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

"(C) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provision of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any non-electing buyer corporation.

"(8) EFFECTIVE DATE.—This provision shall be effective for all taxable years for which the statue of limitations for assessment with respect to an electing Native Corporation has not expired prior to the date of enactment of this Act.

"(A) EXTENSION OF STATUTE OF LIMITATIONS.—Any Native Corporation for which the statute of limitations for assessment will expire within 120 days after the date of enactment of this amendment shall have the right upon request to extend such statute of limitations pursuant to section 6501(c)(4) of the Internal Revenue Code to a date not less than 120 days after the date of enactment of this amendment."

(b) Section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) is amended by adding, after subsection (e), new subsection (f) to read as follows:

"(f) INCREASE IN UNDERPAYMENT RATE.—For purposes of determining the amount of interest payable under section 6601 of the Internal Revenue Code on a tax underpayment attributable to a Native Corporation transaction for which an election has been made under subsection (c) hereof, paragraph (2) of section 6621(a) of the Internal Revenue Code shall be applied by substituting "3.50 percentage points" for "3 percentage points"."

Mr. STEVENS. Mr. President, the amendment I am proposing today provides Alaska Native corporations with the opportunity to go to court to contest any Internal Revenue Service determinations with regard to the sale of net operating losses. This amendment deals with standing only; it provides no new tax benefits of any kind. As the true party in interest in NOL litigation, this is a right which ought to be accorded to the Native corporations, but which the IRS is currently denying.

First, let me briefly give some background. In 1984, Alaska Native corporations, or ANC's as we call them, were granted an exception from the general restriction on sale of net operating losses. This was granted in recognition of the decline in value of the lands and assets transfered to the ANC's by the Alaska Native Claims Settlement Act.

Many of the lands and assets had declined in value because of a delay in transfer and only a small fraction of their original value could be realized upon development or sale. Moreover, the losses generated thereby could not be utilized by the ANC's because they did not have offsetting income. However, if the losses could be sold to profitable corporations, economic value from these conveyed lands and assets could be realized. Hence the genesis of the ANC net operating loss [NOL] provision.

In 1986, Congress made clear its intention that these sales go forward and not be frustrated by the IRS applying theories of law in contravention to the express statutory provisions. Thus, as stated in section 60 of the 1986 act, except as otherwise provided, "No provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned. * * *"

In the 1988 tax law [TAMRA], the Native Corporation NOL exception was phased out under the terms of specified transitional rules.

The most recent stage of the NOL process has been an audit of the losses by the IRS, followed by: ANC agreement with any IRS-proposed adjustments; or litigation. Recently, however, the IRS has advanced a springback theory which is working to deny Native corporation standing in court to contest IRS determinations. Let me explain what has been happening.

In order to implement the NOL provisions, a subsidiary is formed to which the profits of the buyer corporation are transferred—and the buyer's money for purchase of the NOL's goes into escrow. Such profits are then consolidated with losses generated by the ANC's so that little or no tax remains to be paid. If the IRS makes an adjustment which reduces the amount of the losses, there will be an excess of income in the subsidiary corporation formed to receive the buyer's profits. This would normally result in an additional tax due in the ANC's consolidated return and thus give the ANC the standing to challenge the assessment, both administratively and judicially.

However, the IRS has determined that such income does not remain in the ANC's consolidated return but instead springs back to the buyer—along with standing to challenge the IRS' determination. For those ANC's that have an alternative minimum tax liability, standing can nevertheless be achieved, provided the IRS chosses to assert that deficiency. However, for those ANC's that do not, the tax deficiency has sprung back to the buyer—and along with it, the ability to challenge in court the IRS' revaluation of the ANC losses.

The IRS position here is in conflict with the explicit admonition in the 1986 act that the IRS not frustrate these transactions without good and substantial reason. Nevertheless, the IRS has developed this novel springback theory to prevent ANC's from attaining standing to litigate the losses which they claimed on their own returns.

Mr. President, the amendment I offer today has a single purpose: to grant ANC's, the true parties in interest, standing to litigate the NOL sales reported on their own returns. This is important because the buyer corporations are unfamilar with the details of the losses claimed by the ANC sellers. These losses are based on specific Alaskan transactions such as sales of timber, timber harvest rights, mining, and other natural resources. The buyer is usually a corporation from the lower 48 States which has depended upon the Native corporation, by contract, to be responsible for proving and defending these losses.

Most importantly, the real party at interest is the Native corporation because it has, in every case to my knowledge, contracted to indemnify the buyers for substantially all tax liability resulting from any losses incurred during the IRS audit.

Finally, the Native corporation is the party specifically designated by Congress to be the beneficiary under the NOL provision.

Mr. President, the amendment I have sent to the desk will correct the standing problem, and will also have the collateral advantage of simplifying and consolidating audits.

Specifically, my amendment provides an elective process under which the Native corporation and one or more of its buyers may jointly elect to provide standing to an ANC, when denied by the IRS under the springback theory. The amendment sets forth a detailed statement which must be filed and the limited time frame in which the election must be made. Upon election, the Native corporation is the clear party at interest and the sole agent for resolution of the dispute with the IRS, with the Native corporation defending the losses claimed on its return. This is what was originally intended, and this amendment will assure that this intent is fulfilled. At this point, I ask that a more detailed description of the amendment, as well as a section-by-section analysis be entered into the RECORD following my statement.

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

(See exhibit 1.)

Mr. STEVENS. Mr. President, as noted, this amendment is procedural in nature and makes no substantive change to the tax law. The technical aspects of the statutory language and the description of the amendment are based on extensive discussions with the Joint Tax Committee staff, and staff at the IRS and Treasury.

The Joint Committee has estimated that enactment of this amendment will result in a revenue loss to the Treasury of $15 million over 5 years. While I do not agree with the concept of associating revenue losses with a simple granting of standing, I fully understand that our budget process requires an offset to the joint committee's estimated loss.

I have, therefore, included in my amendment a provision that, in the event of an underpayment resulting from any case in which an election has been made, the applicable interest rate shall be calculated at the Federal short-term rate plus 3.5 percentage points, instead of the usual 3 points. This incremental increase in the interest rate on deficiency payments will raise more than the required $15 million.

I would ask the distinguished managers of this bill to accept this provision which guarantees Alaska Native Americans, through their congressionally created Native corporations, the fundamental right accorded all Americans—the ability to contest a tax determination made by the IRS with the full protection of the American judicial system.

Mr. President, this amendment that I propose provides Alaska Native cor-

porations with the opportunity to go to court to contest any Internal Revenue Service determination with regard to the sale of net operating losses.

This amendment has a single purpose only, to grant these Native corporations, which are true parties in interest, standing to litigate the NOL sales reported on their own returns. We believe this is important because the buyer corporations are unfamiliar with the details of the losses claimed by the Alaska Native corporation sellers.

Mr. President, I have included in my amendment a provision that in the event of an underpayment resulting from any case in which an election has been made, the applicable interest rate shall be calculated at the Federal short-term rate plus 3½ percentage points instead of the usual 3 points. The incremental interest rate on deficiency payments will raise more than the required $15 million.

This is a very complicated statement. I congratulate my assistant Chuck Konigsberg for the amendment and the negotiation.

I thank the staff of the Finance Committee, both the majority and minority, for their patience with us. It is a very important amendment from the point of view of our Alaska Native corporations.

I urge my friend, the manager of the bill, to accept this amendment as being one that provides only standing and will pay for itself.

EXHIBIT 1

ALASKA NATIVE CORPORATION STANDING AMENDMENT

DESCRIPTION OF AMENDMENT

SEPTEMBER 24, 1992.

Present Law

Congress allowed Alaska Native Corporation ("ANCSA—Alaska Native Claims Settlement Act Corporations") to sell their net operating losses and other tax benefits ("NOLs") to unrelated profitable corporations ("Buyers") from 1984 to 1988. The Internal Revenue Service is now examining these transactions and has in some cases contested the amount of NOLs reported by the ANCSA Corporations. The Internal Revenue Service has taken the position that any excess assigned income "springs back" to the assigning corporation. As a result, the ANCSA Corporations would not have any regular income tax liability and therefore lack standing to defend the validity of their NOLs.

DESCRIPTION OF PROPOSAL

The proposal would provide ANCSA Corporations standing to defend the validity of their NOLs under certain circumstances. This proposal is procedural in nature and not intended to change the amount of tax, addition to tax, interest (except for the additional interest generated by the election process), penalty or similar amount that may otherwise be due with respect to an NOL sale, including, but not limited to, any alternative minimum tax.

(1) All federal income tax issues concerning the amount and validity of tax benefits of an ANCSA Corporation that were sold to a Buyer in a transaction permitted under section 1804(e)(4) of the Tax Reform Act of 1986 ("NOL sale") would be resolved by the ANCSA Corporation and the Internal Revenue Service under procedural rules applicable to taxpayers generally. For example, the IRS would issue a statutory notice of deficiency to the ANCSA Corporation thereby giving the ANCSA Corporation standing to resolve the issues by settlement or litigation and the ability to pay any deficiency and file a claim for refund and litigate in its name in the appropriate judicial forum. All IRS notices regarding ANCSA Corporation transactions for which an election has been made would be issued only to the ANCSA Corporation, which would provide copies of such notices to all Buyers affected.

(2) An ANCSA Corporation must obtain the written consent of a Buyer with respect to a particular NOL sale in order to receive standing with respect to such sale. In the case of an ANCSA Corporation that has entered into multiple NOL sales, this election is to be made independently by each Buyer with respect to each ANCSA Corporation, but, if made, must be elected by a Buyer for all NOL sales with a particular ANCSA Corporation for which the statute of limitations for assessment is open. If the ANCSA Corporation has dealt with multiple Buyers or profit subsidiaries in the taxable year, it is intended that the Internal Revenue Service will respect the allocation, or ordering of an ANCSA Corporation's losses among several Buyer corporations in a single year. This election must include an agreement by the Buyer's to extend the statute of limitations for its own income tax return (solely with respect to any tax attributable to the subject NOL sale) for at least 180 days after the tax liability of the ANCSA Corporation is finally determined. Nothing in this provision compels the IRS to litigate with an electing Buyer. The provision merely allows electing corporations to proceed in the name of the ANCSA Corporation if there is a tax controversy with respect to the taxability of the income assigned by the electing Buyers. In other words, the IRS will issue a deficiency notice to the ANCSA Corporation for the taxes associated with the portion of the losses that wee sold to an electing Buyer; such tax deficiency will be determined by reference to each Buyer separately and, if such tax amount cannot be determined precisely, will be calculated by reference to the maximum tax rate generally applicable to the individual electing Buyer. The IRS may continue to deal with a non-electing Buyer as it would with any other taxpayer, including administrative settlement or litigation of any contested amounts.

(3) Any tax with respect to an NOL sale will be determined at the rate applicable to the Buyer for the taxable year of the Buyer in which the NOL sale occurred (as if the income assigned from the NOL sale had been reported by the Buyer or an affiliated group of corporations which includes the Buyer), and the Buyer shall be responsible for the payment of such tax. For purposes of issuing a notice of deficiency, or making an assessment with respect to a payment of tax and the filing of a refund claim, the IRS will use its best efforts, working with the ANCSA Corporation and the Buyer, to determine the tax using a Buyer's actual effective tax rate. Any payment made to the IRS by an ANCSA Corporation on behalf of a Buyer shall be deemed to be a payment of tax by the Buyer for the taxable year in question. However, the ANCSA Corporation shall be treated as the taxpayer of such amounts (and of any amounts paid by the Buyer) for purposes of filing a claim for refund and a refund suit. Any overpayment that may be made with respect to an ANCSA Corporation transaction for which an election has been made shall be made jointly the ANCSA and the electing Buyer as the persons who made the overpayment within the meaning of section 6401(a) of the Code; the IRS shall have no further payment obligation with respect to the electing Buyer for such overpayment. Nothing in this provision shall prohibit the Internal Revenue Service from using its authority under section 6402 of the Internal Revenue Code to offset against other liabilities of the ANCSA or the electing buyer the amount of any overpayment that arises as a result of this provision.

(4) A Buyer that elects under this provision shall have participatory rights in any administrative consideration of the tax consequences of an NOL sale (including the right to submit a written statement to the IRS regarding the proposed adjustment and to meet with the IRS at the same time as the ANCSA Corporation), and the right to file an amicus brief in any judicial proceeding commenced by the ANCSA Corporation with respect to such tax consequences. Any meetings with the IRS will be subject to the reasonable discretion of the IRS as to time, place, and manner and will be subject to the general standards of the IRS that are applicable to the time and place for interviewing a taxpayer. The foregoing administrative rights will not apply if the IRS determines that an extension of the statute of limitations is necessary to permit the exercise of such rights and the Buyer and the ANCSA Corporation do not agree to such extension. The same procedural rights are preserved for an ANCSA Corporation for those NOL sales for which no election is filed. Any failure by the IRS to grant the rights discussed above will not affect the validity of the determination by the IRS of any adjustment of tax liability.

(5) Any final determination related to the ANCSA Corporation's NOL sales, whether by administrative settlement or final judicial decision, including any amount of tax, addition to tax, interest, penalty or similar amount, will be binding upon the ANCSA Corporation, the Buyer, and the IRS.

(6) For any underpayment resulting from a case in which an election has been made under this provision, the interest rate applicable pursuant to Section 6621 of the Internal Revenue Code shall be calculated at the Federal Short-term rate plus 3.50 percentage points.

EFFECTIVE DATE

This proposal would be effective for ANCSA Corporations whose statute of limitations for the period of assessment related to sales under section 1804(e)(4) of the Tax Reform Act of 1986 has not expired.

ALASKA NATIVE CORPORATION STANDING AMENDMENT

SECTION-BY-SECTION ANALYSIS

The proposed legislation would amend Section 5021 of the Technical and Miscellaneous Revenue Act of 1988, which provides limited procedural rights to an Alaska Native Corporation ("Native Corporation") with respect to the tax audit and litigation of its sale of tax benefits ("NOL sale") to a subsidiary ("profit subsidiary") of an unrelated corporation ("Buyer") in a transaction allowed under section 1804(e)(4) of the Tax Reform Act of 1986 ("Native Corporation transaction"), by amending subsection (c) and adding a new subsection (f).

Subsection (c)(1)—Elective Nature of Provision

Subsection (c)(1) allows a Native Corporation and one or more of its Buyers to elect to

have the income of the profit subsidiary included on the consolidated tax return of the Native Corporation for purposes of the issuance of a statutory notice of deficiency by the Internal Revenue Service ("IRS"). This would allow the Native Corporation to contest the proposed tax deficiency in the United States Tax Court.

Subsection (c)(1)(A) sets forth the terms of the election. The election for the taxable year of the election must be made within 120 days after the date of enactment of the amendment. The election must be filed jointly by the Native Corporation and by the Buyer and the Anchorage IRS district director and must: (1) identify the parties with particularity; (2) state the amount of income assigned by the Buyer that is subject to the election; (3) if the Native Corporation dealt with multiple Buyers or profit subsidiaries in the taxable year, describe the order in which such Native Corporation transactions occurred (it is intended that the IRS will respect the allocation, or ordering, of a Native Corporation's losses among several buyer corporations in a single year); (4) state the agreement of the Buyer to extend its statute of limitations for assessment and collection solely with respect to the income of the profit subsidiary for the Native Corporation transaction in question; and (5) authorize the IRS to issue a check for any refund or overpayment jointly to the Native Corporation and the Buyer Corporation.

Subsection (c)(1)(A) also establishes that the election is available separately for each Buyer for each Native Corporation. Any Buyer that so elects must, however, elect for all Native Corporation transactions with the particular Native Corporation for all open taxable years.

Subsection (c)(1)(B) provides that any tax liability for the Native Corporation transaction will remain the same whether an election is made or not. Such tax liability will be calculated by reference to the tax return of the electing Buyer.

Subsection (c)(2)—Treatment of Native Corporation Common Parent As Sole Agent

Subsection (c)(2) provides that the common parent of the consolidated return of an electing Native Corporation will be treated under the consolidated return regulations as the sole agent of the profit subsidiary with respect to the Native Corporation transaction, except for purposes of collection.

Subsection (c)(3)—Collection of Tax from Buyer Corporation

Subsection (c)(3) provides that the Buyer and the profit subsidiary will be liable for any income tax attributable to the Native Corporation transaction as if no election had been made. This provision is necessary to ensure full collection of the tax by inclusion of any excess income in the Buyer's return.

Subsection (c)(4)—Treatment of Native Corporation as the Taxpayer for Purposes of Filing a Refund Claim

Subsection (c)(4) permits the Native Corporation to pay all or part of any tax that is assessed against the Buyer for a Native Corporation transaction for which an election has been made and to file a claim for refund as the taxpayer thereof. The Native Corporation is also treated as the taxpayer for purposes of filing a refund suit with respect to any taxes attributable to such Native Corporation transaction. The value for any refund suit would be determined by reference to the Native Corporation. The Native Corporation and the electing Buyer would be the joint recipients of any tax overpayment that is finally determined by the IRS or a court.

Subsection (c)(5)—Procedural Rights of Electing Buyer

Subsection (c)(5)—provides an electing Buyer with the same rights that the Native Corporation has under existing law. That is, the Buyer will have the right to submit a written statement to the IRS, to meet with the IRS at the same time as the Native Corporation, and to file an amicus brief in any litigation proceeding commenced by the Native Corporation. The IRS will send all notices to, and deal directly with, the Native Corporation, which will have the responsibility of forwarding such notices and other information to its affected buyers.

Subsection (c)(6)—Finality of Decision

Subsection (c)(6) establishes that any final determination of the amount of any taxes and other amounts due with respect to a Native Corporation transaction for which an election has been made, whether by administrative settlement or judicial decision, will be final and be binding upon all parties, i.e., the Native Corporation, the Buyer, the profit subsidiary, and the IRS. No further administrative or judicial action with respect to such amounts will be permitted.

Subsection (c)(7)—Procedural Rights When No Election Is Made

Subsection (c)(7) provides that, in the absence of an election, the IRS shall have full authority to settle or litigate with any non-electing buyer corporation with respect to any issue relating to a Native Corporation transaction. Subsection (c)(7) also provides a Native Corporation with the same procedural rights as an electing Buyer in those situations where no election is filed. That is, the Native Corporation will have the right to submit a written statement to the IRS, to meet with the IRS at the same time as the non-electing Buyer and to file an amicus brief in any litigation proceeding commenced by the non-electing Buyer.

Subsection (c)(8)—Effective Date

Subsection (c)(8) provides that this elective provision will be available to all Native Corporations for which the statute of limitations for assessment has not yet expired. Those Native Corporations for which the statute of limitations expires within 120 days after the enactment of the provision will be given the right to extend such statute by agreement with the IRS in order to permit them to make the election.

Subsection (f)—Special Interest Rate

Subsection (f) is the funding mechanism for the election process set forth in amended subsection (c). It provides that, in the event of an underpayment resulting from any case in which an election has been made under subsection (c), the interest rate applicable pursuant to Section 6621 of the Internal Revenue Code shall be calculated at the Federal Short-term rate plus 3.50 percentage points.

Mr. BENTSEN. Mr. President, the majority has examined this piece of legislation and it takes care of a serious problem with the Alaska Native corporations and keeps this revenue neutral, which is no cost to our taxpayers.

I am pleased to support the amendment.

Mr. PACKWOOD. As usual the Senator from Alaska represents the best interests of his State. The amendment has good merit and I will accept it.

Mr. STEVENS. Mr. President, I urge adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 3176) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. I thank the Senators for their courtesy.

AMENDMENT NO. 3177

(Purpose: Relating to pension plan security requirements)

Mr. JEFFORDS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS], for himself and Mr. DURENBERGER, proposes an amendment numbered 3177.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of subtitle B of title IV of the Committee amendment, insert:

SEC. . REQUIRED SECURITY FOR CERTAIN PLAN AMENDMENTS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) INCREASE IN REQUIRED FUNDING PERCENTAGE.—

(A) IN GENERAL.—Clause (ii) of section 401(a)(29)(A) is amended by striking "60 percent" and inserting "90 percent".

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 401(a)(29) is amended by striking "60 percent" and inserting "90 percent".

(2) INCREASE IN REQUIRED AMOUNT OF SECURITY.—

(A) IN GENERAL.—Subparagraph (C) of section 401(a)(29) is amended to read as follows:

"(C) AMOUNT OF SECURITY.—The security shall be in excess of—

"(i) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 90 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, over

"(ii) $1,000,000.".

(B) CONFORMING AMENDMENT.—Subparagraph (E) of section 401(a)(29) is amended by striking ", except that" and all that follows and inserting a period.

(3) PROVISIONS MADE APPLICABLE TO MULTIEMPLOYER PLANS.—Clause (i) of section 401(a)(29)(A) is amended by striking "(other than a multiemployer plan)".

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) INCREASE IN REQUIRED FUNDING PERCENTAGE.—

(A) IN GENERAL.—Paragraph (2) of section 307(a) of the Employee Retirement Income Security Act of 1974 is amended by striking "60 percent" and inserting "90 percent".

(B) CONFORMING AMENDMENT.—Subsection (d) of section 302 of such Act is amended by striking "60 percent" and inserting "90 percent".

(2) INCREASE IN AMOUNT OF REQUIRED SECURITY.—

(A) IN GENERAL.—Subsection (c) of section 307 of such Act is amended to read as follows:

"(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess (if any) of—

"(1) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 90 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, over

"(2) $1,000,000.".

(B) CONFORMING AMENDMENT.—Subsection (f) of section 307 of such Act is amended by striking ", except that" and all that follows and inserting a period.

(3) PROVISIONS MADE APPLICABLE TO MULTIEMPLOYER PLANS.—Paragraph (1) of section 307(a) of such Act is amended by striking "(other than a multiemployer plan)".

(4) CRIMINAL PENALTY MADE APPLICABLE.—Section 501 of such Act is amended by inserting "or of section 307" after "this subtitle".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan amendments adopted after 1993.

Mr. JEFFORDS. Mr. President, I know the hour is late and the subject which I am about to discuss will probably assist most Members who desire to do so to go to sleep. There is nothing more exciting than talking about pensions and pension plans.

On the other hand, when the time arrives when you want your pension, there is nothing more important.

What we are going to be talking about tonight is the risk that is apparent in our country that the availability to fund some of our most precious plans called "defined benefits plans" is again imperiled by the funding situation.

It is difficult to discuss these kinds of issues because of all the multitude of issues we face, this is not one which gets on the front pages. This is a particularly complex one and, thus, like banking regulations and other rules that govern ourselves, they unfortunately do not get the attention they should.

But as we learned all too well over the past few years, inattention can have a terrible price. That price will be hundreds of billions in the savings and loan industry, and some argue there will be a price to pay in the banking industry as well.

Fortunately, the private pension system is not nearly in the straits of the savings and loan industry. But, unfortunately, too many plans are poorly funded and pose a risk to the pension system.

On the positive side, pension assets are diversified and, for the most part, invested fairly conservatively compared to the high-flying S&L's of the 1980's.

But in some respects, there are troubling similarities. Some pension plans are terribly underfunded. We passed rules to toughen funding standards in 1987, but they are not working as well as we had hoped.

One illustration of this is found on this chart, which I have here, which shows what has happened to the top 50 underfunded plans.

As you can see, the top 50 underfunded plans have gone from a deficit, in terms of underfunding, from $13.5 billion in 1989 to $21.5 billion in 1991—that is more than a 50 percent increase than the year before.

A contributing factor may be the moral hazard of the pension system. To the lay person, moral hazard may sound like the temptations of sin. I suppose it is in a way, for all it amounts to is gambling with somebody else's money.

As we know, lifting deposit insurance to $100,000 contributed to some of our problems with the S&L's. For pensions, there really is no limit to the ultimate payout of the Federal Government except the life of the retiree.

It works this way. Suppose you are a company in trouble. Your employees have forgone wage increases for some time, and it is time to renew their contract. You do not have the cash for a wage increase, so why not promise greater pension benefits? Good idea. Very attractive. The outlay or minimum funding required is minimal, and if you go belly up the Government will pick up much of the tab. From both sides of the bargaining table, it is a good deal. It is such a good deal, one company is trying to do it while in bankruptcy.

But Uncle Sam, who may wind up paying the tab, does not have a seat at the bargaining table. And that tab is getting bigger and bigger every year.

The Pension Benefit Guaranty Corporation [PBGC] collects premiums on the 40 million workers in defined benefit pension plans. It pays out those premiums in the form of benefits to retirees whose companies have defaulted on their pension promise.

If you take a look at the second chart, you can see what I mean. PBGC's deficit more than doubled between 1989 and 1991, up to $2.3 billion.

But look at the future. The red line shows where we are going to be at the beginning of the next century. It is almost a straight up line of increasing deficit.

Under pessimistic assumptions, which, given PBGC's track record, probably should be our baseline, that deficit will grow sevenfold over the next decade, to nearly $18 billion.

This may not seem like much money to some, but it is real money for the defined benefit pension system and the workers who rely upon it for their retirement security.

Already, the number of plan sponsors has stagnated, and the headaches of those still in the system have multiplied. Over the 18 years of ERISA, the basic premium has climbed 19-fold, with the top premium going from a buck a head to $72 per participant. That is a huge increase.

What should we do? The administration, to its credit, has put forward a number of proposals to strengthen the system; strengthening the minimum funding standards, improving PBGC's position in bankruptcy and denying its guarantee to new benefits adopted by a troubled plan.

Along with Congressman PICKLE in the House and Senator DURENBERGER in this body, I have introduced a bill along the lines proposed by the administration. I hope we can adopt something like that bill in the next Congress, but I would be the first to admit that the bill requires some reflection and no doubt, improvement.

The amendment I am offering today is just the simplest part of that bill, the part that I hope everyone can agree on. For while we braced the floor of minimum funding standards in 1987, we failed to put a ceiling on promises. And that is where our problem lies today.

Quite simply, our amendment states that if your pension plan is underfunded, you cannot make things worse by promising new benefits and not funding them. Pretty sensible. Any new benefits must be backed by real assets rather than faint hopes.

This is a bit different than what was proposed by the administration. But I think it is better from a retiree's standpoint to know the Government stands behind his or her retirement security rather than assuming there is a guarantee where there is none.

This amendment will not solve the problems of the PBGC or the pension system, but it will help to contain them until we can do more.

And I hope, Mr. President, that next year we can do more, in the areas of minimum funding, bankruptcy, and in the problems faced by flat benefit plans.

But for right now, I hope my colleagues will join me in the modest step that Senator DURENBERGER and I have proposed. While the problems are complex, you need not be an actuary to know that a poorly funded plan should not be making new promises it cannot pay.

Mr. DURENBERGER. Mr. President, I am pleased to join my distinguished colleague from Vermont, Senator JEFFORDS in cosponsoring this amendment. By this amendment, we seek to control the Pension Benefit Guaranty Corporation's [PBGC] financial exposure.

If we are to secure the financial integrity of the PBGC, if we are not going to have a repeat of the S&L bailout, I encourage the Senate to act quickly to maintain the viability of PBGC, which is the ultimate guarantor of our private pension system.

Mr. President, first, I would like to extend my appreciation to Senator JEFFORDS for his leadership in the employee benefits field. He and his staff have worked tirelessly with the De-

partment of Labor and the PBGC in order to assure the continued vitality of our private pension system. I know that he is working on pension portability and played a leadership role in the Betts legislation 2 years ago, and I congratulate him for his leadership.

Let me begin with some background on the problem that we face. America's retirement security system is built on three pillars: Social Security, individual savings, and private pensions.

Mr. President, 9 years ago, when the Social Security system was so close to insolvency that it was borrowing money from the Medicare trust funds, we had the bipartisan courage to shore up the trust funds and ensure that Social Security would be there for our children and grandchildren.

There is a lesson we should have learned from the S&L debacle that threatened the individual savings of millions of Americans. And that lesson is: When we first see a Government-guaranteed financial liability problem, we should act as fast as possible to shore up the system and not let it get out of hand.

Had we provided adequate financing to close down all of the bankrupt S&L's in 1986, the cost to the American taxpayer for S&L's would have been less than $50 billion. But the longer we waited, the more it cost. And we, as a country, are paying the price for that delay today and for many years to come.

Mr. President, the third pillar of our Nation's retirement security is based upon the private pension system. When working men and women retire after a life of service to one or more companies, they often receive a pension from their employer's defined benefit plan.

In the late 1960's, and early 1970's, this third pillar was in serious jeopardy. Employees who worked for 25 years were dismissed by their employers without receiving a single penny of their promised pension. After the failure of several well-known companies in Minnesota and elsewhere, including Studebaker Corp., Minneapolis Moline Corp., White Motor Freight, and others, Congress finally stepped in, in 1974, and established enforceable vesting and fiduciary responsibilities for company pension plans.

I would note that a man standing on the floor of the Senate this evening played a vital role in the adoption of the law regulating pension plans [ERISA], and that is the distinguished senior Senator from Texas, and chairman of the Finance Committee, Senator LLOYD BENTSEN who was a conferee on the bill.

To guarantee the promise of a pension, Congress concurrently created the Pension Benefit Guaranty Corporation [PBGC]. PBGC's purpose has been, and is, to provide financial security for plan participants if their company and their plans fail. The PBGC collects premiums from viable defined benefit plans and takes over and administers plans that terminate when employers go out of business. Thus, in a very real sense, all working men and women who are participants in defined benefit plans rely on PBGC to guarantee the future existence of their pension benefits.

Mr. President, the warning signals that the PBGC is in trouble are everywhere. The red warning light and buzzers are going off, and the U.S. Senate should be paying close attention. PBGC currently has a $2.5 billion deficit, which is up from $1 billion just 2 years ago; the Department of Labor expects this deficit to grow to $18 billion by 1997 if nothing is done.

The two largest losses in PBGC's history occurred just recently—Pan American World Airways terminated plan was underfunded by $900 million, and Eastern Airlines was underfunded by $700 million.

But what worries me the most is that the pension underfunding associated with readily identifiable troubled companies grew last year by an estimated $8 billion, to $13 billion. This constitutes an incredibly large potential liability for PBGC. and it threatens our entire private pension system.

Mr. President, the Jeffords-Durenberger amendment is an initial step that Congress can take to stem the further undermining of our private pension system. The problem is that under current law, companies may grant pension benefit increases, even though the pension plan is underfunded. And if the plan terminates in an underfunded state, PBGC is responsible for providing the benefits, including the benefit increases.

Let me repeat that. Employers may grant pension benefit increases without adequately funding the plan, and PBGC is responsible for the promised benefits.

Mr. President, as you know, America's corporate executives are very smart. They know about this rule, and I believe they have taken advantage of it to the detriment of the American people. Employers, especially in troubled industries, know that they cannot afford significant wage increases, and many have underfunded pension plans. So what do they do? They provide pension benefit increases without funding them. If the company turns itself around, it ends up paying the benefits; but if it goes out of business, the PBGC picks up the tab.

In my view, this amounts to nothing more than a risk-free loan from PBGC to ailing companies. Congress did not establish PBGC for this purpose, and I think it is just plain wrong.

The Jeffords-Durenberger amendment addresses this problem directly. The bill amends the Tax Code to require plans that grant benefit increases to provide security—it could be cash or a bond—if the plan is less than 90 percent funded. In other words, if employers have underfunded plans, and those plans are significantly underfunded, and the employers want to grant benefit increases, then they have to pay for them.

I do not think it is too much to ask employers to pay for the benefits that they promise their workers. If they cannot pay for the increased benefits, then they should be honest and let their workers know. The PBGC, as a Federal guarantee agency, should not be the dumping ground for irresponsible employer promises.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Texas.

Mr. BENTSEN. Mr. President, Senator JEFFORDS, the Senator from Vermont, has been a long-time leader, both in the House and now in the Senate, in the pension area. And, insofar as the portion of this bill dealing with pension simplification, he was of invaluable assistance to us. And our colleague Senator DURENBERGER was also of great assistance.

I have long been interested in this area. Back in 1974, I helped to create the PBGC. I can remember we had the actuarial assumptions and we asked what kind of a premium we are going to need. They said 50 cents. I said I looked at a lot of actuarial assumptions, so why do we not go for broke and make it $1. Now it is over $15. So I have long shared my colleague's concern for the strength of the PBGC and the safety of the benefits it protects. I want to continue to work toward that end.

We have some hearings scheduled on this tomorrow on September 25. And I intend to take the time to have those hearings in the Finance Committee, to do a thorough study, and probably address this issue in the new year.

My colleague has made some suggestions that I think deserve consideration, serious consideration. But they are not the only ones we have seen trying to bring about reform of the PBGC.

We need to ensure the security of pension benefits, to be certain that these pension benefits do not turn to debts. But, I think there is some danger in moving too quickly on these issues. For example, the President has also made some proposals. Some of them I would consider a giant step backwards, such as a reduction in the scope of the PBGC's guarantee. We could get ourselves back in the situation we looked at in 1974, when we saw Studebaker employees with 25 or 30 years of service ending up with little or no retirement benefits.

That is what the PBGC is all about, protecting those innocent workers from destitution in retirement. I know that is the objective of my friend from Vermont.

These are complex, controversial issues. I believe when we are dealing

with the retirement security of millions of Americans that the safety, the stability of those retirement funds, has to be absolutely paramount.

I hope the Senator from Vermont would withdraw that amendment so we can consider it more fully in the subcommittee.

In addition to that, I hope he would participate and come to that hearing tomorrow and make his contributions.

Mr. JEFFORDS. Mr. President, if the Senator will yield, I understand he is agreeing to having a hearing on this and I understand it is on the 27th. I will certainly, in deference to the committee, in understanding the complexities of the issue, in a moment withdraw my amendment.

But I would like to state, I hope everyone will be aware how important it is that we finally place the PBGC and defined benefit plans in a position where the retirees can feel secure. Because as the chairman well knows, there is nothing better than a defined benefit plan if it is properly secured. It is the kind of plan that we have here in the Congress, and Government employees have, so they know their income is going to be certain in the sense of dollars and cents.

So I think it is incredibly important we all understand we must place the PBGC in a situation and our system in a situation where we can get an increase in the number of defined benefit plans instead of a steady decrease in them. Because that is the kind of security all Americans want.

As the chairman well knows, we only have about half of our people with any kind of a pension plan at all other than Social Security. So if we do not work all together to try to bring about a more secure pension plan system, with the extending life expectancies and all, we are just not going to have the kind of country we need.

I thank the chairman again for his assistance and will look forward to seeing him at the hearing.

With that, Mr. President, I withdraw my amendment.

The amendment (No. 3177) was withdrawn.

Mr. BENTSEN. I thank the distinguished Senator from Vermont and look forward to working with him.

Mr. President, I know of no other amendments to be offered tonight.

Mr. President, I understand we will be proceeding on the Smith amendment tomorrow morning at 9 o'clock. Discussion will be continued at that point insofar as that particular amendment.

Mr. BOREN. Mr. President, I am pleased to rise today with some of my colleagues to talk about the community works progress demonstration projects, section 7151 of the urban aid package.

The urban crisis in Los Angeles brought to national attention issues which have been ignored for too long. The statistics reveal the devastating toll of our inaction. Today, nearly one out of every three children born in the United States is expected to receive AFDC benefits before reaching the age of 18. Meanwhile, the number of families receiving AFDC benefits has gone up by 24 percent since 1989 to 4.6 million people. Yet benefits have been frozen or cut in over 40 States. Tragically, in this land that is historically viewed as full of opportunity, over 36 million people are living at or below the poverty level. The persistence of poverty in our inner cities and its consequences—from drug addiction to teenage pregnancy and welfare dependency—tear at the very fabric of our society.

If we can salvage only one lesson from the debris in Los Angeles, it must be this: We cannot afford to stand still. We cannot just do more of the same. It is time to stop playing politics and pointing fingers and start fixing problems. It is time to put into place policies that work instead of wasting time and throwing away money on those that do not.

If we are going to solve the urban crisis in this country, we need to work our way out of it—literally. In the 1930's America addressed an economic and social crisis with a straight-forward, action-oriented approach: the Works Progress Administration. As Senator WOFFORD has pointed out, what worked for FDR was work—not the dole, not welfare, but work.

During the 8 years the WPA was in existence in the late thirties and early forties it helped build this country's modern infrastructure and contributed to our cultural heritage. Over 8 million WPA workers built more than 650,000 miles of roads, highways and sidewalks; 125,000 public buildings including 39,000 schools; 124,000 bridges; 8,000 parks and 18,000 playgrounds. They wrote hundreds of books and created countless artistic works. They served over 1 billion meals to hungry school children and sewed over 382 million garments for the needy. All of this required an investment of about $90 billion in today's terms.

By comparison, what has our welfare system created in the last 8 years? Excluding Medicaid, in the last 8 years we have spent between $400 and $500 billion on what people commonly call welfare. If all public assistance programs and cash transfers, such as Medicaid, are included, the figure reaches over $900 billion. For these huge expenditures, we have managed to produce little more than subsistence-level payments to an increasingly hopeless and alienated segment of American society. By simply handing people checks, the system robs them of a sense of being a part of the communities where they live and it destroys any motivation to achieve. There is nothing worse for a person's sense of self-esteem than to have no reason to get out of bed in the morning and no useful work to perform.

We cannot afford to waste the talents of millions of Americans, most of whom want to give back something of value to the community. I will never forget talking to an elderly gentleman one day after a political speech in the Pecan Bowl in Okemah, OK, the home of Woody Guthrie. He came up to me and said, "Senator, you see that stadium wall over there?" I said, "Yes, sir." He said, "I built that myself. It was part of the WPA. You know, it's not out of line. There's not a crack in it to this good day." As I listened, I thought to myself "that man feels part of the community because of the job he was given." I bet that he has never even dropped a candy wrapper in that stadium. It is his.

Mr. President, I ask unanimous consent to insert into the RECORD at this point two letters I have received from constituents as examples of the overwhelming and positive response to this proposal. I also submit a copy of an interesting article on the hopelessness engendered by the current welfare system. In addition, I would like to add a letter of endorsement from President Carter and an editorial from the Los Angeles Times supporting the provision in H.R. 11.

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

JANUARY 24, 1992.

Senator DAVID L. BOREN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOREN: I commend you on your proposal to introduce legislature to revive programs such as WPA and CCC for getting people off government welfare.

In the early 1930's, during the Great Depression, I got to work on a WPA project driving a dump truck. At the time, there were no jobs; and, I was most thankful for this chance to earn money so I could (1) eat, and (2) so I could save to go to college.

During World War II, I was an American Red Cross Field Director serving at Military bases. After the war, I was recruited by the State of California to be a Boy's Group Supervisor in the newly formed California Youth Authority.

The purpose of the California Youth Authority was to take wards of the court between the ages of 18 to 25, and place them in special Forestry Camps. In addition to fighting forest fires, these young men built roads and telephone lines for the Forestry Department; planted tree seedlings in forestry nurseries, and performed other worthwhile jobs.

Again, Senator Boren, I want you to know I strongly support you on these types of programs. I do so because, from personal experience, they do work.

Yours truly,

——— ———.

JANUARY 8, 1992.

DEAR SENATOR BOREN: I congratulate and applaud you on the changes you are making in the welfare system.

I am a long time recipient, and not proud to admit, if given the opportunity I would

definitely like to earn my living the right way.

I became a dependent recipient, after a fatality in my immediate family, and could not cope mentally and socially for sometime.

I was terminated from my employment, and grasped on the welfare system.

Senator, I really needed counseling, was not given such option.

You are totally: right being on the system much longer than I should have, idleness did set in, and deprive of many opportunities.

The system down falls are many as follows:

1. Taking handouts you become insecure.
2. You lose confidence.
3. You lose interest.
4. You become withdrawn.
5. You become depressed.
6. Denial sets in.

As a recipient for many years off and on I can speak for many.

Rehabilitation for a week could give confidence and effort for needing employment.

I have the capability of holding employment; having been denied so much I lost confident in my abilities to strive for security.

I thank you for reading my letter and I feel hope for 1992.

The right to work changed in the early eighties needs looking into as well.

I look forward to working again.

Sincerely,

WILMA DRIVER.

YOUNG MOTHERS TRY TO AVOID A LIFETIME ON WELFARE

(By Erik Eckholm)

PHILADELPHIA—"Being on welfare is kind of like thinking you can't do anything," she was saying. "You see women who've been on it for years. It makes them lazy. All they do is stay home watching the soaps."

The harsh judgment came not from a conservative politician but from a 16-year-old unmarried mother of a 2-year-old girl, a school dropout, welfare recipient and prime candidate for years if not decades on the dole.

The desire of the young woman, Brunilda Pantoja, to avoid a life on welfare is shared by the 50 teen-age mothers who attend classes at the Lutheran Settlement House in North Philadelphia. On the front lines of the new national drive to break welfare dependence, these teen-agers are in a new kind of program that aims, above all, to prepare them for jobs and self-sufficiency.

They face some long odds.

A DECADE ON WELFARE

Never-married women under 25 years old who have a child and go on welfare stay on it for an average of 10 years, studies show.

And so, with reducing chronic dependence a prime goal of recent Federal and state laws, teen-age mothers are receiving a new burst of attention. In the past, efforts to help them emphasized parenting skills and basic education, in the assumption that most would spend many years at home tending their children. Now, dozens of new programs around the country, including this small one that is supported by a mix of public and private money, also offer training for the world of work in the hope, still improved, that many more teen-age mothers can make decent livings on their own.

But the tumultuous life stories of the teen-agers here cast a sobering shadow over glib proposals to replace welfare with work, and to fight poverty with restored family values.

"These young people have so many interruptions," said Robin Ingram, coordinator of the Lutheran center's teen-age parent program. "Motherhood thrusts them into a world they aren't prepared for. And then they have more pregnancies, and so many family problems."

Most of the girls and their children still live with their mothers, who are often single and on welfare themselves. Some have lost parents, or the fathers of their babies, to drug addiction, jail or gunfire.

Simply by attending classes at the Lutheran center, which eases at least one problem by providing free day care, these young mothers show they may be more determined than most. Some were referred by social workers, others heard about the program from friends and some were referred by probation officers.

Their first hurdle is the high school equivalency certificate, a prerequisite of most job-training programs. Passing the test means only a few months' study for some. But it poses an insurmountable obstacle for others who may get discouraged and quit, or enter a training program that does not require the diploma for work at places like restaurants or hotels.

Most who get the diploma go on for vocational training or community college. But even that hardly insures the ultimate goal: work offering good enough wages and health benefits to justify giving up the security of welfare.

"You can do all you can to get the young women ready for the labor market, but on the other side, there may not be employers sitting back awaiting teen mothers," said Milton J. Little Jr., a vice president of the Manpower Development Research Corporation, a not-for-profit institute based in New York. The institute is coordinating a training experiment for teen-age mothers, called New Chance, at 16 sites around the country, including the Lutheran center in Philadelphia.

For many of the teen-agers, a caring and consistent environment is a welcome novelty. "It's not fun, but you like being here," said Frances Hutchins, 17, whose son is 10 months old. "If I weren't in this school, I'd be in the streets, getting into trouble." She said she enjoyed fixing hair and hoped to study cosmetology, training for work in a beauty shop.

UNLIKE EXPECTATIONS

Many of the teen-agers had welcomed a baby as something that would be all their own. They got that, and more. "I was just thinking that everything was going to be fine, that everybody would help," said Lauren Higgins, 16, who has an 8-month-old girl. "It's not like that."

Lisa Scott, 15, whose daughter is 16 months old, said, "When I had my baby, it was like my life just stopped."

She said that she wanted to study to be a nurse's aide, or maybe a beautician. Ms. Scott, who lives with her mother, said she hoped to move into an apartment of her own in the next year or two. "I guess I'll be on welfare a year or so, while I get my life together and get a job," she said. "I want my daughter to go to a Catholic or a private school."

Around the country, studies show the main way that women get off welfare is marriage. These girls call that a laughable option.

"Marriage?" Ms. Scott said. "I think never."

"Guys think they own you," she said, adding that she had seen and received her share of physical abuse. "I don't want that for my daughter."

Ms. Pantoja, who hopes to attend a community college and then to do paralegal work, said: "I won't marry, not the kind of guys that live around my way. All they do is stand around on the corner. If you have a child, do you think they care?"

A second or third baby can derail the most determined student. "The men, or boys, just won't use birth control," said Carol Goertzel, director of women's projects at the Lutheran center. Many of the girls fear the pill and, uncomfortable with their own bodies despite their early sexual activity, find diaphragms repugnant, Ms. Goertzel said. Many of the fathers, she added, tell the girls not to get abortions.

Parenting lessons are popular. So is a class in arts and crafts. On a recent day, several girls were engrossed in decorating T-shirts with glitter.

KIDS ON THE INSIDE

Asked what this had to do with job preparation, Ms. Ingram, the project coordinator, said: "Don't forget, they are really kids on the inside, but they don't have time to play. They need to do something for themselves and have fun."

While it is too soon to evaluate the success rate of the program, now in its third year, Ms. Goertzel pointed to the case of a girl who had shown up homeless, and had a crack-addicted mother, but over two and a half years fought her way through a course in computerized accounting to a job.

Ms. Goertzel said she worried that government agencies would give up on troubled teen-agers too quickly. "You can't expect people to turn their lives around in six months," she said. "You wouldn't expect your own child of 18 to achieve success in six months."

RECIPIENTS CRITIQUE WELFARE'S CRUTCH

(By Paul Taylor)

LOS ANGELES.—Who hates welfare the most? Here in Watts, the politicians have to stand in line behind the recipients.

"Welfare is a crutch," says Shirley Tyree, 38, who has three children by three different men and has received welfare nearly continuously since 1970. "You're never able to say, 'I did this on my own.'"

"The trouble with welfare is that it punishes you for trying," says Brenda Jackson, a welfare mother of three who lives at the Nickerson Gardens public housing project in Watts. "When you do get a job, your rent goes up and your [Aid to Families with Dependent Children] check goes down."

"Welfare doesn't let the father in the picture," says Vincent Woods, a resident manager at Nickerson. "If he has a job and wants to move in with the mother, she'll lose her apartment. So you have the men roaming from apartment to apartment, the women in charge of all the families, and the kids without any male role models."

These current and past welfare recipients were among a group of a dozen who sat in a circle of folding chairs at a recreation center in Watts and talked about what they saw as an erosion of values, work ethic, family structure and hope in their community.

They do not buy the White House line that failed welfare policies have anything to do with last week's riots, but some of their statements on the subject could well have been lifted from one of the speeches of President Bush.

But no matter how vocally they were prepared to bash welfare, this group was not ready to give it up. "If you cut back on welfare, all you'd get is more crime," said Jackson. "I mean, people got to eat."

Nobody would be safe, not even George Bush," said Woods.

Not all welfare recipients take such hard views; this was a small and unscientifically selected group, recruited by a staff aide to Kenneth Hahn, a liberal Democratic county supervisor who has represented the area for 40 years.

Most academic studies discount the degree to which welfare by itself causes the social ills often attributed to it. The researchers conclude: Unwed teenage girls do not have babies simply to get checks; poor fathers do not abandon their children simply because they know the taxpayers will not. Welfare, for most, is a short-term bridge over troubled times.

But from the halls of conservative think tanks to the streets of Watts, the suspicion recurs that welfare makes it too easy to make too many bad choices.

For example, it is a virtual article of faith in this country that people who own homes make better citizens because they have more of a stake in the system. That is the premise of a program that Housing and Urban Development Secretary Jack Kemp has been pushing for years to turn public housing tenants into owners.

"I would never want to own my apartment," said Nickerson resident Pamela Griffin. "I'd have to worry about maintenance, about plumbing. Around here, when your neighbor's toilet stops up, your toilet stops up."

"Yeah, and what about insurance?" asked a woman who identified herself only as Linda. "You'd have to pay for that."

To conservative critics of welfare, there is no better testimonial to its narcotic effects than to listen to a group of articulate, angry, passive, demoralized recipients denounce the dole with one breath but fret over life without it with the next.

One such critic is California Gov. Pete Wilson (R).

Unlike last week's White House broadside, which seemed to be aimed at all Great Society social spending programs, Wilson has zeroed in on Aid to Families with Dependent Children, the government's largest cash transfer program for the poor and the one most people mean when they use the term welfare.

When AFDC was created during the Great Depression, its target population was widows. Now it serves a record 4.7 million families in a nation where a record 27 percent of all children are born out of wedlock. In nearly all cases. AFDC goes to single mothers.

California has twice the number of AFDC recipients of any other state, and its welfare caseload has been growing at triple the rate of its population increase since the recession hit here in late 1988. Its benefit levels—$663 a month for a mother and two children—are the fourth-highest in the nation; more than three times bigger, for example, than Texas's $184 per month.

Late last year, Wilson unveiled a proposal to cut AFDC benefits by 10 percent across-the-board and another 15 percent in six-months for families with an able-bodied adult. It would also end the practice of increasing AFDC grants each time a mother had an additional child, offer financial incentives for teenage mothers to stay in school and allow recipients to keep more income from work without losing benefits.

The proposal, together with similar legislation already adopted in Wisconsin and New Jersey, is the closest thing to a new national strategy toward welfare.

In Watts, the skepticism toward these kinds of welfare changes extends to providers as well as recipients. "If the governor thinks his plan is going to be a deterrent to what unfortunately has become a normal way of life for so many people, I'm afraid he's going to be disappointed," said Mattie L. Gardette, director of the welfare office in Watts.

Her office has become such a busy, dangerous place in recent years that metal detectors have been set up at entrances and at least four security guards patrol the bustling waiting area, where up to 160 people were waiting to be seen at midday today.

Tyree's 22 years on welfare is an extreme case—the majority of recipients stay on AFDC for two years or less. But her life story does illustrate the trap of dependency.

She went on AFDC when she had her first child at age 16, and the following year dropped out of high school six months short of graduating. Over the years she has taken courses to be a manicurist and a switchboard operator, but has never been able to hold a job for more than brief stretches.

Meantime, she has had three children, one of whom had her own child when she was 14. "That broke my heart," Tyree said. "But she said she wanted a baby, and there was no way I could talk her out of it." Her daughter has been a welfare mother since 1986.

Tyree got off AFDC for good in 1989 when she sent her youngest child to live with his grandmother, in the hope that he would escape the influence of neighborhood gangs. But she then immediately applied for assistance from the county-run general relief program for adults, which pays $364 a month. To keep the money coming, she works a mandatory 10 hours a week in a senior citizen center.

Tyree said there were times over the years when she got so desperate she considered domestic work. "But then I decided, hey, I got too much education for that. "She now hopes to become a health technician.

Others in the group had the same kind of scorn for low-paying jobs. "McDonalds pays four dollars and fifty cents," said Jackson. "That's not even a living wage for a teenager."

"They ought to raise the minimum wage to $10 an hour," said Woods. "A man can't have any self-respect for less than that."

"And they ought to put jobs in the community," said a woman who identified herself only as Gayle. "That's why we've got so many problems around here. No decent jobs. No factories. No construction projects."

Actually, there is one major construction project going up a little more than a mile from the park where the group gathered, and crews from the community are building it.

"We figure we better get jobs putting it up, because I'm afraid we're going to be using it a lot when it's done," said Marcine Shaw, senior deputy to Hahn.

The project is a 1,000-bed jail.

AUGUST 3, 1992.

Hon. DAVID L. BOREN,
U.S. Senator, Russell Senate Office Building, Washington, DC.

SENATOR DAVID BOREN: The purpose of this letter is to express my and The Atlanta Project's support for the Community Works Progress Act of 1992 and its provisions creating the Community Works Progress Program, the National Youth Community Corps, and the Civilian Community Corps. Each of these programs will be a useful and important component in the effort to fight unemployment, poverty and despair in economically disadvantaged areas, such as those neighborhoods targeted by The Atlanta Project.

The goals of the Community Works Progress Act compliment and will serve to further the principles of The Atlanta Project. I believe this legislation will help to create opportunity in economically disadvantaged communities, while increasing their fiscal well-being and raising the quality of life through projects which provide tangible community benefits.

We appreciate your leadership on moving this legislation through Congress. I am anxious to see this bill passed so that we may get on with the important work of improving our communities.

Sincerely,

JIMMY CARTER.

RECYCLING AN OLD AND GOOD IDEA

A public jobs program that would put welfare recipients to work is one of the gems in the federal tax bill that the Senate Finance Committee approved last week. The Community Works Project Administration (CWPA), modeled after Franklin D. Roosevelt's WPA, which put people in jobs during the Depression, is a promising approach to welfare reform.

The CWPA, proposed by Sen. David L. Boren (D–Okla.), would require able-bodied welfare recipients, except single mothers with very young children, to work or lose assistance. The government would become the employer of last resort.

The public jobs would be created by local and state governments or federal agencies that applied for federal grants managed by the U.S. Department of Labor. Those jobs could including cleaning up parks, delivering hot meals to senior citizens or other tasks that require minimal skills. Using the CWPA to replace government workers would be prohibited.

Welfare recipients would earn the minimum wage or their welfare payment plus 10%, whichever was higher. In addition to a few extra dollars a month, CWPA workers would also gain training, job experience and references that could help them get better-paying jobs.

Many states require welfare recipients to go to school or work, but neither federal nor state government alone can adequately fund job-oriented education and training programs.

California's workfare program, GAIN, is especially effective in smaller cities, suburbs and rural communities, but it has space for only a fraction of the state's welfare recipients. GAIN would be complemented by the CWPA because the federal project would provide training opportunities and jobs for people who otherwise could not compete in a tight job market.

The Senate Finance Committee has allocated $400 million for demonstration projects in three cities and two states. The projects are to run for four years, long enough to determine what would work without harming poor children. Los Angeles should be one of the test cities.

Welfare reform is high on the public agenda. A public jobs program belongs in the mix of remedies designed to cure welfare dependency.

Mr. BOREN. Mr. President, while I strongly support the JOBS Program, increased funding for existing job training programs is only one part of the solution. We must implement a change in thinking and a new comprehensive approach that incorporates what has worked in the past so that we can provide for the future.

The modern version of the WPA would provide work opportunities for

those who are on welfare or unemployed. It will, in the words of Franklin Delano Roosevelt, "preserve not only the bodies of the unemployed from destitution, but also their self-respect, self-reliance and courage and determination."

This new Community WPA creates jobs for welfare recipients and the unemployed to help make them feel part of the community. Our plan puts them back to work as productive members of society. In short, it puts the actual work in workfare. All able-bodied welfare recipients, with the exception of women with small children and those who are enrolled in education and job training programs, would take a job with the new Community Works Project Administration [CWPA], if they cannot find a job elsewhere.

The demonstration program will be administered by the Secretary of Health and Human Services, in consultation with the Secretary of Labor. First, the Secretary will award grants to three urban areas that have actively encouraged community involvement. Two such cities suggest themselves immediately. Amidst the debris in Los Angeles, private initiatives such as Rebuild Los Angeles offer hope that residents will have a stake in their communities and a commitment to their success. And, of course, the leadership of former President Carter has engendered spirit, energy, and hope throughout the country, but especially in Atlanta through his work on the Atlanta project.

In addition, the Secretary will award grants to two States. Public and private leaders will test the CWPA model by funding different projects in urban and rural areas throughout the States. Local and State agencies, as well as private nonprofit organizations, could apply for grants from the Community WPA. The projects could include areas such as work on the country's infrastructure and the creation or maintenance of parks. Projects will also involve community work such as law enforcement assistance and delivering meals to elderly people.

These projects will provide individuals the opportunity to work in teams on meaningful community projects. It is our hope that these projects will enhance the skills of men and women through on-the-job learning as well as through more formal job enhancement activities, closely coordinated with existing State services or with community-based organizations. To assure that each individual will have time to seek other employment or to participate in alternative employment enhancement activities, no individuals will be allowed to participate more than 32 hours a week. In many cases for the first time, the CWPA will give people an actual job experience to list on the résumés that they are learning to write.

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Many young men, who are falling through the cracks in the current system because they have never held a job, will be given the opportunity to contribute to their communities through the Community Job Opportunity Program contained in the Labor Committee's valuable addition to the bill. It is my hope that the CWPA and the Community Job Opportunity Program for discouraged workers will be closely coordinated in one or two cities to establish a working model for future full-scale CWPA projects.

Participants will work the number of hours equal to their benefit amount divided by the minimum wage for the duration of the project. In return, all participants will receive a bonus that will be roughly 10 percent higher than their current welfare or unemployment benefits. If participants worked more hours, they would receive the applicable minimum wage. The act encourages projects to pay participants with one check, including the benefits and bonus, to further establish the link between work and earnings. This program is not meant to be punitive, but rather to increase the opportunities for disadvantaged people while fostering the value of work in our society.

The CWPA is based on one commonsense principle: If you are able to work, you will have the opportunity to work. Society will fulfill its obligations to people who are down on their luck, but it has the right to ask those persons to help themselves in return.

So often it seems that our current system discourages an individual's initiative and encourages dependency. We have to reexamine the very basic assumptions of these programs and see if there are better solutions that encourage and reward initiative. We talk often in the Senate of empowerment, but I can tell you from my own experience and observation that nothing empowers people more than a job and the feeling of accomplishment that goes with it.

We have to reawaken the spirit of community in this country. That spirit has remained dormant too long. It is time to recycle an approach that worked well in the past and modify it to current conditions. Perhaps many of those out of the work force today lack the skills and training of those who went to work for the WPA in the Depression years. That difference means that we need to give Americans who are disadvantaged and disillusioned an incentive to become a productive part of society regardless of their skills. We should try to instill in all our citizens the ethic of hard work, reward them for providing service to their community, and give them accomplishments on which they can look back with pride.

More importantly, instead of the growing division between taxpayers and welfare recipients, it is time to make all Americans part of the same team. Too often we talk about problems instead of doing something about them. We need action—immediate and sustained action. America worked its way out of a crisis in the 1930's. If we get to work, we can do it again today.

FDR asked 50 years ago:

> What do people want more than anything else? In my mind, two things: Work and Security. They are spiritual values, the true goals toward which our efforts of reconstruction should lead.

I believe that the Community Works Progress Program can help restore people's dignity and help bring them back into the fold of their communities. I hope that one day soon, CWPA participants will be able to look at a newly refurbished house or a new park playground and say with justified pride, "I helped build it!"

Mr. SIMON. Mr. President, I want to express my support for the Community Works Progress Demonstration Program that has been included as section 7151 of H.R. 11. I believe this is a concept that is long overdue. In 1987, I wrote a book called "Let's Put America Back to Work." In the book, I suggested that we could learn a lot from the Works Progress Administration [WPA], and that it was time to revisit this idea. As I wrote then:

> The United States of America works, but it must be made to work better. A massive waste of humanity is taking place every day, and that waste is slowly but surely eroding our economic future.

The waste I was writing about is the waste of human capital that embodies itself in the growing number of unemployed, underemployed and discouraged people in this Nation. The greatest asset this Nation has is the productivity of its people. Yet too many of our people do not have the opportunity to be productive. According to the Bureau of Labor Statistics [BLS], as of last month, 9,700,000 people were listed as unemployed, and an estimated 1,125,000 more were listed as what the BLS calls discouraged workers. Discouraged workers are those people who do not have jobs, but who have become so frustrated that they have given up even looking. Still millions more Americans are stuck in part-time jobs, because they cannot find adequate full time employment.

When people do not have the opportunity to work, they give up hope. I believe that the great division in our society is not between black and white; not between Hispanic and Anglo; not even between rich and poor. It is between those who have hope and those who have given up. We have far too many people in our society who have given up, and we need to do something about it.

In Let's Put America Back to Work, I suggested that one way to address this problem would be to revisit the WPA concept with a Guaranteed Job

Opportunity Program [GJOP] to give all Americans who want to work a chance. I believe that we need to do what we can to encourage the creation of more private sector jobs; but, when private sector jobs are not there, we need to do better than say "stay at home, we will send you a check." This Congress I reintroduced legislation to set up GJOP. S. 666, the Guaranteed Job Opportunity Act was introduced in March of last year.

In March of this year, I was proud to join Senator BOREN in introducing S. 2373, the Community Works Progress Act of 1992. This bill incorporates the GJOP into a Community Works Progress Program, and establishes two youth programs based on the Civilian Conservation Corps. Senator BOREN has been a valuable ally. Indeed, largely through Senator BOREN's leadership, we were able to include a provision to test our proposal for a Community Works Progress Program in H.R. 11. In addition, I would be remiss if I did not also mention the valuable contributions of Senators REID, WOFFORD, DASCHLE, LEVIN, PRYOR, ROBB and, of course, the distinguished chairman of the Finance Committee, Senator BENTSEN. I am sure there are others who I have failed to mention, but I can assure you that I appreciate the work of all who have helped to move this concept further.

Section 7151 of H.R. 11 will create a Community Works Progress Demonstration Program to test this concept in three urban areas and two States, on a statewide basis; $400 million is set aside for this purpose over a 4-year period. This program will fund projects that serve a useful public purpose, and pay the participants 10 percent more than they receive in AFDC or unemployment benefits. Participants who are not receiving AFDC or unemployment compensation will receive the Federal minimum wage or the State minimum wage, whichever is higher. Higher compensation can be paid, if the Secretary approves. Like under the old WPA, the participants will work 4 days, and use the fifth day to look for permanent employment or improve their skills in job training programs. Participants will also be eligible for supplementary services like transportation or child care, where such services make it possible for those individuals to participate.

We have a choice between paying people for doing nothing and paying them for doing something. I believe it makes infinitely more sense to pay them for doing something, to let them be productive, to let them know they are contributing toward a better society. The projects the Community Works Progress Demonstration Program makes possible will enrich those who work on them, and our society will be enriched by the fruits of their labor.

Mr. DASCHLE. Mr. President, I was pleased to join Senator BOREN several months ago in cosponsoring S. 2373, the Community Works Progess Act. At that time, I spoke on the floor about an American welfare system that is failing too many Americans—both taxpayers and welfare recipients, and, most importantly, the children who are born into the cycle of poverty—and heralded the Community Works Progress Administration approach as a potential answer to this problem. Today, thanks to Chairman BENTSEN, Senator BOREN, and others, we have an opportunity to begin redressing this situation.

In my State, and across this country, there has been a ground swell of support for reform of our welfare system in a way that will put both our tax dollars and the unemployed to work. Many taxpayers feel that their hard earned dollars are supporting people who can but don't work. Meanwhile, many on welfare want to work but can't find a job, and therefore feel an increasing sense of frustration and alienation. The community works progress concept embodied in S. 2373 addresses this issue head on by putting able-bodied welfare recipients to work on community works projects.

Total Federal and State public assistance spending in 1990 was $210 billion. That is a tremendous outlay for helping the less fortunate in our society. But it only represents half the equation. We should also ask what is being done to help recipients in need of this assistance get back into the work force. The answer is clearly not enough.

Many have asked how America can continue to afford a welfare system that consumes ever increasing amounts of tax dollars that are not invested in the future of the country. Senator BOREN has looked to historical precedent for a partial answer to that question.

During the 8 years the Works Progress Administration [WPA] existed in the 1930's and 1940's, 8 million people were put to work building 39,000 schools, 8,000 parks, and more than 650,000 miles of highways and roads for an investment of only $90 billion in today's dollars. That is a stark contrast to the over $900 billion that has been spent over the past 8 years on public assistance, providing only subsistence level payments for food and shelter.

Many of the end products produced with the $90 billion WPA investment are still being used and enjoyed by taxpayers today. On the other hand, the $900 billion consumed on public assistance in the last 8 years has left nothing substantial that can be used by future generations.

The original WPA was truly an investment in America, while current public assistance programs are primarily consumption originated. The establishment of community works progress demonstration projects will mark a crucial initial step in revamping an inefficient welfare system that now too often does more to perpetuate reliance on public assistance than to provide the necessary means and incentives for moving those in need of assistance back into the work force. These projects borrow from a successful concept from our past and mold it to address a number of contemporary social and economic challenges.

Like the WPA program of the past, these demonstration projects will offer thousands of people from families receiving public assistance the opportunity to learn and to master marketable trades that eventually may help secure them jobs in the private sector. If, through this program, we can help people breakout from the vicious cycle of poverty and the reliance on public assistance, while at the same time investing in worthwhile and lasting public service projects, we will have better seved those who were formerly on public assistance and American taxpayers.

The Community Works Progress Program contained in H.R. 11 is a substantial investment in our communities, our infrastructure, and our people. It is my sincere hope this innovative reform will be enacted into law as soon as possible.

Mr. REID. Mr. President, since we introduced the Community Works Progress Act on March 19, the unemployment rate in this country has risen from 7.3 percent to 7.6 percent. This means that 500,000 more people are out of work now than were out of work 6 months ago. The total number of people out of work in this country is, according to the latest figures, 9.7 million.

We are spending billions on unemployment, and we are spending billions on welfare. In an 8 year period, fiscal years 1983 to 1990, the Federal Government alone spent almost $1 trillion on welfare programs. This does not include all the money States and localities have spent, and it does not bring the figure to present value. But $1 trillion is a conservative estimate of what we spent on welfare over that period.

And what do we have show for it? What we have to show is a continuing cycle of welfare and unemployment and discouragement.

In another 8-year period, 1935–43, a different kind of welfare program, the Works Progress Administration, spent $11 billion, which would be about $90 billion in today's money.

And what do we have to show for this welfare program? In Nevada alone, over 2,000 miles of roads were built or improved, 154 bridges were built, 60 schools were built or reconstructed, 39,000 feet of runway were built or improved, and many other projects were undertaken.

Today, we still cross bridges these workers made, attend their schools, ride on their roads, and use the public buildings they either built or decorated with murals.

As important as anything the WPA built, this agency boosted the morale of Americans by giving them a chance to avoid the humiliation of being on relief. Samuel Cohn, who was a WPA economics statistician, said;

People talk about leaf-raking and say it was not very economic. It served a purpose. It made people feel more useful at a time when that was important.

It is still important today to feel useful. The current welfare system in America is demeaning. We make people take handouts. Nobody wants a handout. People want to live productive lives.

The old WPA gave work to about 8.5 million Americans. This is about 88 percent of the number of people currently unemployed in this country.

The old WPA gave work to some very famous Americans. For example: Woody Guthrie, Studs Terkel, Saul Bellow—a Nobel Prize winner in literature, Jackson Pollack, and a number of other writers, musicians, and artists.

Many talented writers contributed to the famous American Guide Series, which covered every State, and many regions and cities. Alfred Kazin said of this project that these writers "uncovered an America that nothing in the academic histories had ever prepared one for."

I recently borrowed from the Library of Congress the volume covering Nevada. It is a wonderful book, and I recommend other Senators take a look at the volumes for their own States.

Woody Guthrie, as I mentioned, was one of the artists employed by the WPA. Guthrie was employed by the Library of Congress through the WPA, and he wrote the following in one of his letters during that period to one of the librarians:

The Library of Congress is good. It has helped me a lot by recording what I had to say and to copy all of my songs and file them away so the senators can not find them. Course they are always there in case they ever get a few snorts under their vest and want to sing. I think real folk stuff scares most of the boys around Washington. A folk song is what is wrong and how to fix it, or it could be who is hungry and where their mouth is, or who is out of work and where the job is, or who is broke and where the money is, or who is carrying a gun and where the peace is. That is folk lore and folks made it up because they seen that the politicians could not find nothing to fix or nobody to feed or give a job of work. I can sing all day and all night, sixty days and sixty nights, but of course I aint got enough wind to be in office.

Folks are crying out, Mr. President. We here in Washington need to listen to them, we need to take action, and we need to stop just blowing wind.

This bill does not just create makework projects. According to a survey of 506 cities made by the U.S. Conference of Mayors, there are 7,252 public works projects ready to go which could create 418,415 jobs.

There is work to do, and there are people to do it. Let us put the two together.

SMALL MARKET INSURANCE REFORM

Mr. KOHL. Mr. President, last evening the Senate adopted by voice vote a small market health insurance reform amendment offered by our colleague from Texas. The cost and availability of health care in America has reached crisis proportions, and it is time that we took action.

In Wisconsin, the average family will spend 136 percent more on health care today than they did only a decade ago. And if health care inflation continues to rise at its current rate, Wisconsin families can expect to pay 419 percent more by the year 2000 than they did in 1980. Just as important, more than 400,000 nonelderly Wisconsin residents had no health insurance in 1991.

This amendment will make several important changes to America's health care system. First, it will make the cost of health insurance fully deductible for the self-employed. This eliminates a long-term inequity in the Tax Code, and will make health insurance more affordable for those who work for themselves.

Second, it limits the practice of discriminating on the basis of preexisting conditions. Under this amendment, many workers should be able to switch jobs freely and without risk of losing their health insurance due to previous health problems. Reducing discriminatory practices will allow more small employers to provide access to affordable insurance.

This bipartisan proposal will also put some controls on annual premium increases, and promote access to managed care, which has been shown to hold down health care costs. It will expand Medicare coverage for preventive care. And thanks to the efforts of our colleague from New Mexico, Senator DOMENICI, increased access will be available for those with serious mental illnesses.

The Senate adopted the proposal because of a sincere desire to provide relief to some of the Americans who are being denied access to health care as a result of discriminatory pricing practices and spiraling costs.

Our work, however, must not stop here. As witnessed by the voice vote, incremental reform requires little political coverage, only a political instinct. Comprehensive health care reform will occur only when we have the courage to impose real controls on skyrocketing health care costs. It will occur only when we are prepared to take the tough steps necessary to avoid economic devastation and tougher steps down the road. Adoption of this amendment is a first step, but clearly is only a modest step toward addressing the critical problems of cost and access.

As we have seen, traditional competition hasn't lowered costs. We must put a lid on what we spend for health care, just like Germany and Canada and Japan do. Then, we must ensure universal health insurance coverage by helping all businesses to provide insurance to their workers. We must allow the uninsured affordable access to a publicly sponsored health plan. I do not believe at this time that it is necessary for government to take over the function of the private insurance industry to accomplish cost control and guaranteed access. We must be partners in this process—but we must somehow manage the competition in the health care sector or we will never get a handle on health care inflation.

I joined my colleagues in supporting the incremental small market reforms in this proposal because they represent a consensus and because they will provide some short-term relief to the uninsured. But I am eager to press forward for comprehensive reform and would hope that the action taken on this proposal would not impede that effort.

THE BENTSEN MOTION TO TABLE THE DECONCINI CHILD CARE TAX CREDIT AMENDMENT (NO. 3163)

Mr. DODD. Mr. President, it is with regret that I oppose the amendment offered by my colleague from Arizona, Senator DECONCINI. The purpose of this amendment—to expand child services for working families—is a goal that he and I have often pursued together. In 1990 we worked together in enacting the child care and development block grant, landmark legislation that now provides funds to States to improve the affordability, availability, and quality of child care services. This block grant has provided great assistance to working families.

But the need for child care services still far exceeds the supply, and employers can play an even stronger role in meeting that critical need. A substantial tax credit for on-site child care would encourage greater employer involvement.

Unfortunately, the cost of this proposed child care tax credit is offset by a measure that I cannot support. The amendment would limit deductibility of executive compensation. It is not appropriate, in my view, for the Federal Government to become this directly involved in setting executive salaries.

I believe that the much more appropriate means for control over corporate executive compensation lies with corporate shareholders themselves. I have urged the Securities and Exchange Commission to increase the ability of shareholders to weigh in on such matters. As a result, they—the shareholders—are in a stronger position to influence executive compensation decisions.

As I said at the outset, I couldn't agree more with the goal of expanding

child care services for working families. I couldn't agree more with encouraging family-friendly employment policies. I commend the efforts of my colleague from Arizona, but this is simply not the proper revenue offset for this new tax credit.

ESTIMATED TAX PAYMENTS BY SMALL BUSINESS

Mr. BAUCUS. Mr. President, I would like to comment on the rollcall vote which has just occurred. I know that Montana's small businessmen and women feel that the estimated tax payment provision incorporated in this bill is just one more burden to bear in already difficult times. I agree with them. The current provision is flawed and I want to see that such a flaw is corrected.

Unfortunately the proponents of the amendment have failed to identify a revenue offset which keep the correction from adding to the budget deficit. And large budget deficits are a continuing danger to business, both large and small. It is for this reason that I have opposed this amendment.

I know that the chairman shares my concerns. I hope that we can work in conference to fix this problem for small business without increasing the budget deficit.

BUMPERS AMENDMENT NO. 3164

Mr. SANFORD. Mr. President, I want to express my support for the amendment of the Senator from Arkansas.

We have spent this entire year talking about the need to help the small businessman. President Bush was in North Carolina yesterday laying out new proposals to help small businesses. He had something in his bag for everyone. By the time he got to the end of his handouts, he had spent $20 billion, and then he went on to bash Congress for not being responsible and for not balancing the budget that he prepared with a record deficit.

This tax legislation at least pretends to pay for its handouts. Unfortunately, the largest payment mechanism is speeding up tax payments. Because the budget window is only open for 5 years, there is a perceived benefit at the end of the 5 years. But that does not make it right. We should not spend money we don't really have.

This amendment addresses precisely that issue. It also goes to the heart of all small businesses: Cash flow. Businesses run on cash. Any business man or woman knows that. Most tax measures are supported or opposed by the business community based upon the impact on its cash flow. This bill goes straight into the pocketbook of small businesses, the same constituency that we are hoping can create new jobs our economy so badly needs. It tells small businesses and individual taxpayers: You must not only pay the current year's taxes, but you must also loan the Federal Government part of next year's tax bill. If this passes, taxpayers will have to make payments in the first quarter of 1993 for taxes they will owe in 1994 on returns they will file in 1995.

That's insane for two reasons. First, the Federal Government should not go begging with tin cup in hand to the small business community asking for a loan in anticipation of how well it will do next year. Second, it's not real money, so we shouldn't spend it. If the revenue window were to be extended for a few more months, to say, April 14, the day before the next estimated payment is due, the full amount of revenue would logically be lost. So, it's not real money. It's just a matter of requiring taxpayers to involuntarily make a loan to the Federal Government.

Finally, it's important to know that this amendment only applies to those who earn less than $75,000 per year. It does not apply to those who earn above $75,000. Those who have income in excess of $75,000 will be required to make their estimated payments at the higher level despite this amendment.

This provision will hurt small businesses more than any of the good things in this bill will help them. I thank the Senator from Arkansas for having the courage to face this issue. It will be subject to a vote on whether to waive the budget agreement.

The truth is, it doesn't affect the budget, even though we pretend it does and we spend the money. Let's be straight with the American people and recognize this ruse. I urge my colleagues to support this amendment.

MORNING BUSINESS

Mr. BENTSEN. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

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

TRIBUTE TO IOWA STATE SENATOR DALE TIEDEN

Mr. GRASSLEY. Mr. President, today I rise to make special note of the retirement of an outstanding Iowa State senator, Dale Tieden. Senator Tieden is retiring after 28 years of distinguished service to the people of Iowa.

Senator Tieden began his career in public service in 1965, when at the age of 41, he was elected to the Iowa House of Representatives.

During his first term in the House, he successfully managed the adoption of his first bill, major legislation which established the Iowa Public Television Network. This remarkable accomplishment for a freshman legislator marked the beginning of a very productive career.

Senator Tieden was reelected to another three terms in the House, and in 1972 won his first of five consecutive elections to the Iowa Senate.

Senator Tieden has been known not only for his legislative accomplishments, but also his caring attitude toward the people with whom he has come into contact. The lives of many Iowans have been improved by the thoughtfulness and efforts of Senator Tieden. His compassion and concern for the young pages who serve tirelessly at often thankless tasks for the general assembly is also well known.

In addition to his legislative and public service endeavors, Senator Tieden has been very active in the community as a member of the United Church of Christ, the Masons, the Farm Bureau, the Izaak Walton League, the Rotary, the Sierra Club, the chamber of commerce, and the Heritage Foundation.

The people of Allamakee, Clayton, and Winneshiek Counties have been well-served by Senator Tieden, and are proud of his accomplishments and dedication. On behalf of these and other Iowans, I express our deepest gratitude and well wishes for the future.

TRIBUTE TO KENNETH D. HENDERSON

Mr. FOWLER. Mr. President, today I would like to pay tribute to a person who has dedicated his entire working life to serving the American public. Mr. Kenneth D. Henderson, forest supervisor of the Chattahoochee-Oconee National Forest, died unexpectedly of a heart attack on August 27, 1992, in Gainesville, GA.

Mr. Henderson's distinguished public service career spanned more than 32 years with the Forest Service. While attending college at North Carolina State College of Agriculture and Engineering in Raleigh, Ken worked for the Forest Service every summer from 1956 to 1959. After obtaining a bachelor of science in forestry, he began his permanent career with the Forest Service in 1960 as a research forester at the Southeastern Forest Experiment Station in Asheville, NC. From there Ken progressed through various assignments throughout the South, including positions in Etowah, TN; Greenville, TN; Cleveland, TN; Atlanta, GA; Eustis Lake, FL; Pisgah Forest, NC; and Jackson, MS.

Ken left the southern region in 1980 to become forest supervisor of the Shawnee National Forest in Harrisburg, IL. After serving 8 years in that position, he returned to the South as forest supervisor of the Chattahoochee-Oconee Forest.

Mr. President, I had the pleasure of visiting with Ken Henderson on the day before his sudden and unexpected death. We took a brief canoe trip on the Ocmulgee River to assess the merits of preserving the land along the river for its esthetic, soil, and watershed values. I knew Ken to be a man dedicated to caring for the land and serving the public good. His dedication to the Forest Service had no limits, and he was clearly one of the Forest Service's most respected officials.

Over the years, Ken has been recognized by his colleagues and superiors for his outstanding performance and dedication to the Forest Service and his desire to promote a land conservation ethic. In 1985, Ken Henderson was the recipient of the prestigious Cyrus Mack Conservation Award by the Nature Conservancy.

Mr. President, community service was an integral part of Ken Henderson's life. He belonged to numerous organizations, including the Rotary Club and the Society of American Foresters. He served on the board of directors of the Georgia Forestry Association and the Northeastern Georgia Council of the Boy Scouts of America. He was a family man and a respected member of the community.

Ken is survived by his wife Roemelda, his daughter Tanya, his sons Todd and Tyler, and his parents, Clifford and Sarah Henderson of Spindale, NC.

Mr. President, Ken Henderson was an unselfish, giving person who will be missed by many including this U.S. Senator.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,040,322,818,827.37, as of the close of business on Tuesday, September 22, 1992.

Anybody familiar with the U.S. Constitution knows that 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 Federal spending approved by Congress—spending 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, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman, and child owes $15,729.73—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

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?

ADDITIONAL COSPONSOR—S. 3123

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I be added as an original cosponsor to S. 3123, legislation that will bring much needed tax relief to Louisiana victims of Hurricane Andrew and other victims who have lost their homes or personal property in declared disasters. This legislation will complement the emergency supplemental appropriations bill passed last week by the House and Senate to ensure individuals receive the relief they so desperately need to rebuild their shattered lives.

In terms of damage to public and private property and to Louisiana's economy, Hurricane Andrew was the most devastating natural disaster in Louisiana's history. Estimated losses in my State alone exceed $1.4 billion. The emergency relief package sent to the President will be of enormous help to Louisiana and other States recovering from this and other disasters. However, it will not provide the much-needed tax relief for victims who have lost their homes or personal property as a result of recently declared natural disasters.

First, this measure extends the time to rebuild or purchase a principal residence from 2 to 4 years, thus allowing victims more time to reinvest their insurance proceeds without being penalized by capital gains calculations.

Second, this measure excludes from taxation insurance proceeds received for items lost in a disaster. Recognizing that insurance proceeds rarely if ever reimburse a taxpayer in full for this loss, this provision would minimize the record keeping involved in listing losses of all personal property and replacement cost of normal household personal property.

Third, this measure would allow insurance proceeds from personal property and real property to be joined together in one common fund. While under current law proceeds from personal property losses must be used to replace personal property, this provision allows the victim to allocate insurance proceeds to replace real and personal property as the victim deems necessary, without fear of incurring a taxable gain.

Mr. President, this bill will make three very simple revisions to the Tax Code that will assist disaster victims in replacing destroyed personal property. We can provide this relief with little cost while preserving the integrity of our Tax Code. I urge my colleagues join me in my support for this important disaster relief measure.

TRIBUTE TO GARY MYRICK

Mr. HEFLIN. Mr. President, I rise today to extend my sincere condolences to the Goodwin Myrick family in the loss of his son Gary Myrick. Goodwin is the long-time president and chief executive officer of the Alabama Farmers Federation. On August 10, Gary, only 40 years old, died tragically at his home in Gadsden, AL, suburb of Southside.

Goodwin Myrick has served as president of the federation since the late seventies, and is also the chief executive officer of the ALFA companies located in Alabama: ALFA Insurance, ALFA Corp., and ALFA Services, Inc. After he took over leadership of the Alabama Farmer's Federation, the State's premier agricultural organization, Gary ran the family dairy. At the time of his death, he lived with his two adopted sons in the home once occupied by his grandparents.

Gary was a graduate of Southside High School and a member of Southside Baptist Church. After high school, he attended Gadsden State Community College and was secretary-treasurer of the Coosa Valley Dairy Herd Improvement Association. He was well respected in the community as a businessman and advocate for the concerns of the dairy farmer. This quiet community was understandably stunned by Gary's untimely, senseless, and tragic death.

Gary Myrick's sudden death at such a young age reminds us once again not only of the importance of making the most of the time we have here, but also of our disturbing lack of control over seemingly random events. I know Gary made the most of his time, wisely following his father's example.

Again, I extend my condolences to all the members of Gary's family in this tremendous loss.

U.S. SECURITY ASSISTANCE IN THE POST-COLD-WAR ERA

Mr. CRANSTON. Mr. President, one of the projects in which I have been deeply involved of late has been the issue of what directions should our security assistance programs take in the post-cold-war era.

To that end, both I and my good friend and distinguished colleague from Vermont [Mr. LEAHY] have prodded the Pentagon into opening up the International Military and Education program [IMET] to civilians from other lands. This was done to help empower democrats from weak and emerging democracies in their effort to exert civilian control over their own military establishments, and to promote a healthier civil-military dialog.

I have also been very involved in the issues of the demilitarization of the fight against narcotics trafficking in the Andean region, the creation of a new civilian police force and the demilitarization of internal security in El Salvador, and the provision of law enforcement assistance to the emerging democracies of Eastern Europe and the former Soviet Union.

These efforts have been accompanied by a systemic search for information about what are current practices in the U.S. security assistance field, what purposes do they seek to address, and whether these programs are still appropriate in light of the sweeping changes taking place since the end of the cold war.

To that end, I together with my friends and colleagues, the distinguished Senator from Indiana [Mr. LUGAR], the distinguished Senator from New York [Mr. MOYNIHAN], the distinguished Senator from Washington [Mr. ADAMS], and the distinguished Senator from South Dakota [Mr. DASCHLE], asked the General Accounting Office to delve deeply into these issues.

Today, I am pleased to release the third in a series of GAO reports that have been prepared to address these vital issues. The first report, "Security Assistance: Shooting Incident in East Timor, Indonesia," released last February, helped clarify issues about U.S. assistance to that country in light of a military-led massacre. A second report, "Foreign Aid: Police Training and Assistance," was released to good effect in March. A third report, "Aid to El Salvador: Slow Progress in Developing a National Civilian Police," we released just yesterday.

The report we are releasing today, "Foreign Assistance: Promising Approach to Judicial Reform in Colombia," is an important contribution to the search for better, more relevant, and more democratically oriented security assistance programs.

Perhaps the two most important findings concern the importance of host country political will and the priority placed on administration of justice reform by the U.S. Embassy in that country.

I look forward to receiving the two outstanding reports on international security assistance issues promised to my office by the GAO, and ask unanimous consent that part of the report released today be printed in the RECORD.

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

GENERAL ACCOUNTING OFFICE, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION,
Washington, DC, September 24, 1992.

Hon. ALAN CRANSTON,
Hon. RICHARD LUGAR,
Hon. DANIEL PATRICK MOYNIHAN,
Hon. BROCK ADAMS,
Hon. THOMAS A. DASCHLE,
U.S. Senate:

This is the second report in response to your request that we review U.S. assistance to improve the administration of justice worldwide.[1] This report focuses on U.S. efforts to assist Columbia in improving its judicial system. We have also issued reports to congressional committees addressing U.S. efforts to improve the judicial systems in El Salvador and Panama.[2] Specifically, this report describes (1) the approach employed by the United States to manage its judicial reform assistance to Colombia and (2) the program activities undertaken and planned by the host government and the United States in this reform effort.

BACKGROUND

By the early 1980s, Colombia had recognized that its judicial system was largely ineffective in dealing with the high crime rate, and in 1984, the government declared Colombia to be under a state of siege due to high levels of narcotics and guerrilla violence. Between 1984 and 1989, approximately 31,000 deaths were attributed to drug trafficking violence alone. It is estimated that 350 judicial personnel have been murdered since 1980, including 50 judges, and a Colombian government survey shows that 25 percent of the judges reported that they or their families have been threatened. Additionally, military and guerrilla forces were allegedly murdering and torturing people without being brought to justice.

In 1986, the U.S. Agency for International Development (AID) began to provide small grants—$290,000 at first—to help improve the Colombian judicial system. Grant assistance had reached about $2.6 million by fiscal year 1990. The 1989 presidential campaign and 1990 election became the turning point for the Colombian government to begin to take actions against the pervasive lawlessness. Upon taking office in 1990, the new President announced that judicial reform was one of his highest priorities.

As a result, the Colombian government established a goal to enhance the autonomy and power of the judiciary, decongest the courts by making the court system more efficient, and modernize the criminal investigation process.

In 1990, to support the commitment of the new Colombian presidential administration, AID began developing a 6-year, $36-million program to improve the functioning and independence of the Colombian judicial system. This funding included $6.9 million for the U.S. Department of Justice's International Criminal and Investigate Assistance Program (ICITAP) project designed to improve judicial protection and the investigation and prosecution of serious crimes.

RESULTS IN BRIEF

Although it is too early to determine if AID's judicial reform package will achieve its objectives, the U.S. approach to judicial reform in Colombia thus far appears to be working. AID has promoted its judicial reform efforts in Colombia as a model to be duplicated elsewhere. Three factors have set this project apart from similar projects in other countries: (1) small grants were given—in this case to a private foundation—to help build a reform consensus within the judiciary, the private sector, and the executive branch; (2) the United States required a concrete demonstration of Colombian government commitment before providing increased funding; and (3) the U.S. Embassy designated this effort as one of its top priorities and involved multiple government agencies.

Many of the Colombian government reforms and AID project activities are still being implemented, but they appear to be addressing the major systemic flaws in the Colombian judicial system. Thus far, Colombia has ratified a new constitution and is implementing new procedural codes. AID has developed a systemwide reform package to address each of the deficiencies in the judicial sector and to support Colombian reform measures. As of March 1992, AID had disbursed $6.5 million of its $35 million 6-year reform project.

Although reform activities are being implemented, AID had not established criteria nor set targets or benchmarks that would help it evaluate the Colombian government's progress in implementing judicial reforms and provide a basis for further disbursements. In commenting on this report, AID stated that it has now identified performance indicators and is further refining them. Once the indicators and outputs are finalized, AID will relate disbursements to tangible reform results.

THE UNITED STATES USED A DIFFERENT MANAGEMENT APPROACH IN COLOMBIA

AID has used a different management approach than in other Latin American countries, such as El Salvador and Panama, to implement reforms in Colombia's judicial system. In contrast to other management approaches, AID used small projects managed by a private foundation, the Foundation for Higher Education (FES),[3] to spur interest in judicial reform within the Colombian government. AID financed projects to study the problems in the judicial system and, in the process, a consensus was built among representatives of FES. FES representatives became experts in Colombian judicial reform and, based on their commitment to change, the new Colombian President appointed a number of these representatives to serve in his administration. Thus, a bridge had been built to transition into a larger scale reform program. Host government, private foundation, and U.S. Embassy officials are confident about the expected improvements.

SMALL PROJECTS USED TO BUILD CONSENSUS

In the mid 1980s, the Colombian government did not know what actions to take to correct its ineffective judicial system. In addition, according to AID, the possibility of receiving AID funds contributed to a jurisdictional dispute between the Justice ministry and judicial branch as to who should manage the funds. Furthermore, AID was concerned that bureaucratic infighting and a cumbersome bureaucracy would delay project goals, and Colombian officials were skeptical of foreign involvement in their country's internal affairs. Further compounding the problem, AID did not have appropriate systems and procedures in place to administer the program and interact with the Colombian government.

Because of these concerns, AID determined it would be inadvisable to begin a large-scale judicial reform project with the government at that time. Nonetheless, both AID and the Colombian government recognized that something needed to be done to improve Colombia's judicial system. AID, along with the U.S. Embassy, decided that the best approach would be to provide small grants to a private organization to begin building consensus among the judiciary, the executive branch, and the private sector that judicial reform was of paramount importance. FES was selected to accomplish this task, and from 1986 through 1990, AID provided it with a series of small grants. Under the guidance of an advisory committee composed of members of the executive and judicial branches of the government and FES, the foundation began its work in noncontroversial areas, such as providing codebooks to judges, developing baseline data on the operation of the judicial system, and developing judicial libraries.

[1] Our first report was Foreign Aid: Police Training and Assistance, (GAO/NSIAD-92-118, Mar. 5, 1992).

[2] Foreign Aid: Efforts to Improve the Judicial System in El Salvador, (GAO/NSIAD-90-81, May 29, 1990) and Aid to Panama: Improving the Criminal Justice System, (GAO/NSIAD-92-147, May 12, 1992).

[3] FES was founded in Cali, Colombia, in 1964 as a nonprofit organization modeled after U.S. philanthropic organizations.

As FES completed these projects and built support for its advisers, it was able to expand its focus to include pilot projects. For example, in 1990, FES developed a project in Itagui, Colombia—a small city in the heart of the narcotics-trafficking country—to streamline court procedures and reduce the backlog of cases. By automating case management work load, sharing administrative resources among 13 judges, and designing more efficient office space, Itagui brought its caseload up-to-date within a year. The Minister of Justice is considering expanding this project nationwide.

According to AID and FES officials, their most visible success was the design of the Courts of Public Order. Because judges were subject to both threats and bribes, Colombia had been unable to convict narcotics-traffickers and guerrilla terrorists. Using AID funds, FES sent a group to study the actions Italy has taken to deal with organized crime and then designed a court system to address Colombia's needs. This new system consists of 92 judges who remain anonymous throughout the proceedings and are provided additional protection, such as police escorts and protection at undisclosed quarters away from their families, while investigating and hearing such cases. Since the system's inception in January 1991, these courts have convicted 70 percent of the approximately 800 individuals tried for drug and terrorism-related crimes, according to a Colombian government official. The conviction rate is only 12 percent in ordinary courts. While human rights organizations have expressed concern that the Courts of Public Order may infringe upon a defendant's due process rights, the U.S. Embassy believes adequate safeguards against such infringements have been incorporated into the process.

According to AID, FES, and Colombian government officials, the most significant impact of AID and FES' work has been the resulting commitment from key officials on the need to reform. For example, FES sponsored a work group in April through August 1990 supported by the Colombian President. The group, lead by the Justice Minister, designed the constitutional reforms, which the Assembly ultimately ratified. In contrast, a FES adviser characterized reform efforts in El Salvador as meaningless because reforms were imposed from outside without internal commitment from the host government. A Colombian government official cautioned, however, that consensus building takes time; it took 2 years in Columbia. The Colombian Attorney General stated that if AID had stopped funding the initial FES studies, Colombia might not have had the political will to go forward with the reform movement. Now he believes the impetus is too strong to stop or reverse the movement.

U.S. ASSISTANCE PREDICATED ON COLOMBIAN GOVERNMENT COMMITMENT

By August 1990, after the new administration took office in Colombia, the political atmosphere was ripe for reform of the Colombian judicial system. The new Colombian government had pledged itself to judicial reform and had proposed a major overhaul of the judicial system. The U.S. Embassy believed Colombian government had a general consensus on what needed to be done, and it was at this time that AID began its long-term efforts. The U.S. and Colombian governments signed a 6-year, $36 million grant agreement on August 9, 1991.

The new judicial reform project differs from earlier, smaller projects in several ways. Not only is it larger, but the initial funding will be based on the Colombian government's demonstrated commitment to reform. Unlike the earlier AID projects, the U.S. government signed the project agreement with the Colombian government rather than with FES. While FES will continue to administer funds, such as procuring commodities in Colombia and managing some pilot programs, the government, rather than the private institution, will be responsible for the project's implementation.

AID released the first $1 million of project funds in October 1991. However, before releasing the next disbursement, the Department of State and AID wanted the government to have planned and begun implementing the project. To accomplish this, AID required the government to establish a multi-institutional executive committee to (1) manage the projects, (2) coordinate and plan all activities, (3) ensure that project objectives are met, and (4) provide the U.S. Embassy with an annual work plan. The executive committee was named on January 24, 1992; the first annual work plan was submitted to the Embassy on February 24, 1992, and AID disbursed $5.5 million on March 24, 1992.

ICITAP officials advised us that conditioning the $5.5 million disbursement on the establishment of an executive committee delayed the disbursement of $2.3 million that had been earmarked for their projects. This delayed ICITAP's schedule by about 6 months because it could not transfer a project manager to Colombia to plan future work. However, we could find no negative impact from this delay. Given that the Colombian government did not adopt implementing legislation until November 1991, AID stated that the executive committee could not have approved any of the proposed ICITAP projects and ICITAP could not have begun training earlier. Further, the focus of much of ICITAP's work will be in strengthening the office of the Prosecutor General, which has yet to begin operations. ICITAP could not identify any specific negative impact on its program, and it was able to use reprogrammed regional funds and bridge monies during this period to plan its activities.

Despite the minor delay in ICITAP activities, we believe that AID's decision was correct to seek concrete evidence of the Colombian government's commitment to judicial reform and to structure the project around reform efforts already initiated. This approach not only responds to the specific conditions in Colombia, but also avoids problems we found with judicial reform projects in other countries. For example, judicial reform projects in El Salvador, Honduras, and Panama have experienced implementation problems largely because the governments in these countries were unwilling or unable to provide a strong political or financial commitment. In each case, the United States gave funds before the host governments had demonstrated the willingness or capability to take the steps necessary to make the projects successful.

One shortcoming in AID's approach in Colombia, however, was that AID had not based further disbursements on actual progress resulting from the reforms. We believe that this is particularly important because, even though laws reforming the judicial system have been enacted, it is too soon to tell how effectively they will actually be implemented. The grant agreement between the U.S. government and the Colombian government requires Colombia to submit annual work plans to AID. These plans will form the primary basis on which project activities will be approved. Neither the grant agreement nor the project paper specify how the work plans will be evaluated nor what criteria will be used to approve future projects. The project paper does, however, require three external evaluations, but does not base further disbursements on the outcomes of these evaluations.

PRIORITY MULTIAGENCY MANAGEMENT APPROACH

According to U.S. Embassy officials, counternarcotics is the number one priority and driving force behind all U.S. policy decisions regarding assistance to Colombia. Both the U.S. Congress and the Embassy have recognized the importance of judicial reform in achieving counternarcotics goals and therefore rank judicial reform as a top U.S. objective.

Given the importance of this endeavor, Embassy officials determined that the AID project alone could not achieve the desired improvements and that it should look to other U.S. assistance programs for whatever related training or commodity support they could supply. Further, officials believe that the State Department can provide the foreign policy perspective in its dealings with the host government. Other U.S. embassies, such as in Honduras and Costa Rica, have permitted AID's judicial reform activities to operate without the benefit of high-level embassy support and contributions from other U.S. agencies. In Colombia, however, reforming the judicial system is viewed as a U.S. multiagency effort.

U.S. efforts to design the Courts of Public Order is indicative of the success of this multiagency approach. Specifically, AID funded the design of the project; the State Department's Anti-Terrorism Assistance Program provided security training; the Department of Justice helped prepare court operation and case administration procedures; the Embassy's Narcotics Affairs Section purchased equipment out of counternarcotics funds; and ICITAP conducted security surveys and provided training for judges and protective details. These organizations, as well as the United States Information Agency, remain involved in promoting judicial reform in Colombia.

To coordinate these diverse activities, the Ambassador established an Administration of Justice Team within the Embassy that meets twice a month to review all recent activities and plans. Heads of any agency or State Department section that has an interest in, or an assistance program related to, judicial reform is included. For example, during our visit, the committee turned down one agency's request to initiate a training course because such training would have duplicated another program. Also, through this mechanism AID and ICITAP project managers have direct access to the Ambassador.

Embassy officials were generally pleased with now judicial reform activities were managed and credited the extensive coordination and control to the current Ambassador. They stated that one lesson they have learned from this experience is that unless judicial reform is a U.S. Embassy priority, it may not receive the management and political attention it needs to succeed. The experience in Colombia shows how a program can work when the ambassador brings together the different U.S. agencies and becomes personally involved in high-level policy dialogue with the host government. Officials we interviewed recognized that this type of coordination is dependent on the management style of the Ambassador and they expressed the hope that it can continue.

APPROACH IN COLOMBIA DIFFERS FROM THE OTHER U.S. EFFORTS

AID's management approach—waiting to began a large project until the host government was committed to reform—appears to be an effective strategy to prevent the inefficient use of U.S. funds. The philosophy of U.S. officials in Colombia is quite simple: the host government rather than the U.S. government should lead reform efforts and the United States should stimulate rather than impose changes. According to a State Department official the most significant U.S. success was its ability to assist Colombia when Colombia was ready and willing to make necessary changes.

This approach contrasts with situations in other countries. In El Salvador, for example, the United States unilaterally identified the needs and then used a project to elicit host government support to make significant political improvements. We concluded in 1990, however, that after 6 years, and the commitment of $13.7 million in U.S. financial support, the El Salvadoran government still had not demonstrated the commitment to make the necessary changes, and the goals of U.S. assistance remained largely unmet. In Panama, the government was having difficulty making the financial commitment necessary for U.S. reform assistance to succeed, and AID officials in Honduras cited the lack of host government support as the major factor impeding reforms.

COLOMBIAN AND U.S. REFORM ACTIVITIES ADDRESS MAJOR PROBLEMS

FES work showed that the Colombian judicial system was flawed in all aspects—systemic and institutional—and needed a major overhaul. To correct these flaws, the Colombian government determined it had to completely revise its constitution and procedural codes. AID's reform efforts were designed to support these changes.

Both the Colombian government and AID recognized the need to develop a comprehensive rather than piecemeal approach to judicial reform. Overall, Colombian and U.S. government officials determined that if all the participants in the justice system were not included in the reform efforts, improvements made in one area could create problems in another area.

COLOMBIA ADDRESSES SYSTEMIC PROBLEMS

The Colombian government identified the three systemic problems in its judicial system:

1. The judiciary was not independent from the executive branch, so it could not deliver impartial justice.

2. The courts were extremely congested, so about 75 percent of all criminal cases remained untried. By 1991, the Colombian government estimated that 2 million cases had not been resolved.

3. The system lacked effective investigation and prosecution of criminal activities.

The government then established goals to correct these problems.

In July 1991, the Colombian Assembly ratified a new constitution that helped establish an independent judiciary, provided measures to decongest the courts, and promoted more modern and independent means to investigate and prosecute criminal acts. In November, it adopted legislation to implement these constitutional changes. AID, State, private sector, and Colombian officials agree that if these changes are implemented properly, they should dramatically improve Colombia's judicial system.

To enhance the autonomy of the courts, the constitution provides that the judicial branch will submit its budget to the executive branch and manage its own finances. To relieve court backlog, the constitution grants certain parties temporary authority to act as conciliators or arbitrators. Implementing legislation, for example, authorized the establishment of conciliation centers. These approaches are targeted at resolving family, labor, and civil disputes so that the courts can deal with serious crime.

Also, because the authors of the new constitution wanted to include assurances that agencies would not abuse their new authorities, they established or reaffirmed oversight agencies to oversee the conduct and management of public sector employees and funds. Further, the constitution specifically provided for the protection of human rights of citizens. A recent publication from Americas Watch, a leading human rights organization, praised the Colombian government's efforts and said that these efforts signal a willingness to reform.

According to Colombian government officials, the most important change in updating Colombia's antiquated judicial system was the establishment of the prosecutor's office to investigate and prosecute cases. Under the old system, judges, usually untrained in investigative techniques, performed the investigations and then judged a suspect's guilt or innocence. Under the new system, a trained investigator obtains and develops evidence, a prosecutor prepares a case against the accused, and a judge then determines guilt or innocence based on the evidence developed during the investigation and a presentation by the prosecution and the defense. The Courts of Public Order were the first to use this new approach.

AID PROJECT SUPPORTS EACH INSTITUTIONAL CHANGE

AID's project is designed to complement the three goals of Colombia's judicial reform program. The first AID project component focuses on improving the organization and planning capabilities of the judicial sector. The second will focus on improving the investigation and prosecution of crimes as well as judicial protection and the investigation of corruption and human rights violations. The third will focus on improving the operation, administration, and independence of the courts. In this last area, AID will help the courts administer themselves, extend the pilot administrative improvement programs systemwide, and provide advisers and other assistance to the new conciliation and mediation centers.

According to AID and U.S. Embassy officials, the approach in Colombia, which supports all three goals of judicial reform, was based on the view that when diverse problems exist throughout a judicial system, targeting just one area could be counterproductive and wasteful. For example, improved investigations would result in more cases brought to trial. Unless there is a corresponding effort to deal with a court backlog, as occurred in Colombia, improving and reforming administration of justice in a country could be much less successful. AID, ICITAP, and Colombian officials stressed that the strength of the program to reform the Colombian judicial system was to address the entire judicial process.

By March 1992, AID had disbursed $6.5 million for activities to be conducted in the first year of the project. About $3.9 million was targeted for the new prosecutor's office; training and equipping investigators; the public ministry, which will oversee official conduct and human rights; judicial protection and related criminal investigation; and prosecution support. Of the $3.9 million, ICITAP received $2.6 million. An additional $770,000 will support operations of the courts and the conciliation centers, and about $1 million will fund AID and FES administrative costs, such as salaries and overhead expenses. Since funds were only recently disbursed, these activities are just beginning to be implemented.

RECOMMENDATION

We agree with AID's philosophy that the United States should support host government measures and that the disbursement of project funds should be based on the Colombian government's demonstrated commitment. Therefore, to ensure maximum effectiveness and efficiency of U.S. funds, we recommend that the AID Administrator, in conjunction with the U.S. Ambassador in Bogota, establish criteria and set targets or benchmarks for measuring Colombian government progress in implementing its reform plans and base additional disbursements on assessments of the government's progress in meeting these goals.

AGENCY COMMENTS AND OUR EVLUATION

The Departments of State and Justice and AID generally agreed with our report, and AID stated that it was in the process of implementing our recommendation. AID stated that specific outputs—and indicators to verify progress in achieving them—have been identified and are being refined, and that future disbursements and other aspects of project implementation will relate to tangible indications of progress resulting from reforms.

Although the Department of State generally agreed our report accurately described the judicial reform project in Columbia, it stated the report inaccurately suggested different philosophies motivated the Central American projects and the Colombian project. State said that the Colombian approach—to follow, not lead and to use a sectorwide approach managed by the Ambassador drawing on the full country team—reflects the general policy guidance for all administration of justice programs. State said it was much easier for U.S. assistance "to follow" in Colombia than in El Salvador or Honduras because the Colombians had already done extensive analysis of their justice system and had initiated action before the U.S. government became involved. State also said that, ironically, the Colombia project benefited from the relative unavailability of funds in the early years, whereas substantial funds were earmarked for Central American countries. It stated that earmarks often provided funds before host countries exhibited the political will to implement major judicial reforms.

Our report does not question whether the general policy guidance for the administration of justice programs was different for Colombia than for other countries. However, as State acknowledged, the implementation of the policy guidance in Colombia clearly differed from how the programs were implemented in Central America. This resulted in money being spent on judicial reform programs in countries such as El Salvador and Honduras before the governments had demonstrated a serious commitment to reform. Our reviews have shown that unless recipient governments are seriously committed to reform, U.S. government spending on these programs has been ineffective. The State Department's comment regarding the unavailability of funds of Colombia seems to imply that had more money been available, it may have been spent prematurely in Columbia

and the programs could have run into the same problems as in the Central American countries.

AID commented that the impact of U.S. judicial reform assistance in El Salvador is measurable and cited as examples El Salvador's investigative unit, judicial training, amendments to the constitution strengthening the independence of the judicial branch, and the enactment of a law establishing a public defenders program. Our earlier report also identified these areas of improvement in El Salvador's judicial system; however, the report pointed out that progress was made much more difficult because the El Salvadoran government was unwilling or unable to provide a strong political or financial commitment. While El Salvador has taken initial steps to improve its judicial system in response to the January 16, 1992, peace accords ending the civil war in that country, AID officials in El Salvador stated that they see the earlier judicial reform project as largely unsuccessful because political will and consensus were never achieved.

SCOPE AND METHODOLOGY

To obtain information on judicial reform efforts in Colombia, we reviewed legislative authority for providing this assistance, interviewed officials and reviewed records from AID and the Departments of State and Justice in Washington, DC, and reviewed reports from human rights and other organizations. We also visited Colombia where we met with U.S. Embassy, host government, and private sector officials. We also drew on our work performed in El Salvador, Costa Rica, Honduras, and Guatemala as part of our review of U.S. assistance to improve administration of justice worldwide. We conducted our review from January to August 1992 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary of State, the Administrator of AID, the Attorney General, and appropriate congressional committees. We will also makes copies available to others upon request.

Please call me at (202) 275-5790 if you or your staff have any questions.

HAROLD J. JOHNSON,
Director, Foreign Economic Assistance Issues.

TRIBUTE TO CONGRESSMAN TED WEISS

Mr. JEFFORDS. Mr. President, I rise today to pay tribute to a friend and colleague, Congressman Ted Weiss, who passed away last week. Ted left behind a legacy of accomplishment and a reputation of compassion and integrity. I had the great privilege of serving with Ted in the House, particularly on the Education and Labor Committee, as well as the congressional arts caucus, of which I am a cofounder and current vice chairman and he served as chairman.

The arts caucus was founded in 1981 by Congressman Fred Richmond and myself. Ted immediately joined and was one of its strongest advocates.

Ted's passion, conscience, and conviction could be seen in many areas, but certainly in his support of the arts. No one could speak with more authority to the importance of the arts and the need for Federal support. Ted's devotion to and understanding of this issue were unmatched.

Ted saw in his remarkable district—the west side of Manhattan, perhaps the cultural center of the world—the effects of government support of the arts, through programs for students at risk, the elderly, and those who, without public aid, would never experience the richness of the arts. On caucus cultural weekends to New York City, Ted established a warm rapport as easily with renown cultural leaders as with inner-city children who had just performed dance exercises.

In the face of unwarranted attacks on a Federal commitment to support for our national culture, Ted was undaunted. Ted had an ability to distill arguments, to get to the heart of the matter. In his support of freedom of expression and constitutionality, he was steadfast. He was an articulate defender of creativity, artistic freedom, and of the principles which make this Nation great.

Ted was a leader who inspired respect. Whether eloquently expressing the need for support for the arts in every community, or promoting human rights or AIDS awareness, Ted stood up for what he believed in because he believed it was right. For this, he earned the admiration and affection of everyone he touched.

This Congress truly feels the loss of Ted Weiss. But, perhaps our greatest tribute to him would be to honor the integrity and dedication which he embodied.

VOTER REGISTRATION REFORM

Mr. FORD. Mr. President, earlier this week, the Senate failed to override President Bush's veto of S. 250, the National Voter Registration Act of 1992. I deeply regret that we were not able to enact this important piece of legislation. I believe that voter registration reform is long overdue.

There are many causes for low voter turnout. Not all of those causes can be corrected with legislation. But the easiest of these causes to remedy is the inability of eligible citizens to register and vote. Obviously, President Bush and his supporters in this Senate who voted to sustain his veto believe that voter registration reform cannot increase voter turnout. I would commend to their attention an article by Ruy A. Teixeira that appeared in the recent issue of the Brookings Review.

Entitled "Voter Turnout in America: Ten Myths," the author dispels 10 myths about low voter turnout with 10 realities. The 10th myth, according to the author, is that "there is nothing we can do to increase voter turnout, given the current sorry state of American politics." But the author explains in his reality that "there are quite a few things we could do to increase voter turnout, some of which are virtually certain to work."

Among those things that are certain to work, Mr. Teixeira says that "simply making it easier to vote, by reforming the personal registration system, would probably result in increased levels of voter turnout. * * * My estimate is an increase of about 8 percentage points, which translates into adding about 15 million voters to the electorate—a substantial expansion of citizen participation by any reasonable standard."

Mr. President, this is an excellent article. I ask unanimous consent that it be printed in the RECORD.

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

[From the Brookings Review, Fall 1992]

(By Ruy A. Teixeira)

VOTER TURNOUT IN AMERICA: TEN MYTHS

After a small improvement in 1984, voter turnout in American presidential elections has resumed its steady decline. With the 3 percentage point reduction in the 1988 election, voter turnout has now dropped almost 13 points since 1960. That puts voter turnout at barely half (50.2 percent) of the voting-age population, below the 51.1 percent mark set by the 1948 Dewey-Truman election and the lowest level since 43.9 percent of age-eligible voters turned out in 1924. The sheer magnitude of nonvoting in contemporary America is staggering: more than 91 million Americans did not bother to participate in 1988. And if turnout remains as low in 1992 as it was in 1988, which seems likely, given widespread voter dissatisfaction, more than 94 million voting-age Americans will not participate this November.

This dismal situation has occasioned much comment and concern across the political spectrum. The concern is welcome, but it has also been accompanied by a great deal of misunderstanding about the causes and consequences of low voter turnout. Much of the misunderstanding resides in a series of myths about voter turnout that lack any real empirical foundation. Dispelling these myths is, I believe, essential to improving citizen participation levels.

Myth #1: Turnout is going down because the poor are dropping out of politics. According to this myth, declining turnout is primarily due to massive increases in nonvoting among the poor. As a result, the affluent, who continue to vote, dominate the political process while the poor are ignored.

Reality #1: Turnout is going down because all groups—the poor, the middle class and the rich—have become less likely to vote. Although it is true that turnout decline has been sharper among the poorer groups in society, turnout has been falling steadily among all income groups, including the most affluent. For example, if we divide the U.S. electorate into six equal-sized income groups ("sextiles"), we find that, although turnout declined 8 percentage points among the lowest sextile between 1972 and 1988, it also fell 5 points among the highest income group. Results are similar if we look at groups defined by education or occupation: declining turnout has, as it were, been a "team" effort, with all strata of society making a contribution.

Myth #2: Turnout is going down because people see no difference between the Democrats and Republicans. This myth locates the

source of turnout decline in the supposedly self-evident fact that no one sees any real differences between the political parties anymore. And, naturally, since citizens now see no differences between the parties, they choose not to vote.

Reality #2: More people see important differences between the Democrats and Republicans than they did three decades ago. Survey data show that the proportion of the electorate that sees important differences between the Republicans and Democrats actually increased by 9 percentage points (from 50.3 percent to 59.6 percent) between 1960 and 1988. Now, it is certainly possible that people find it increasingly difficult to know what these differences mean, but the fact remains that they are more likely, not less likely, to see differences. It follows that the popular perception of whether the Republicans and Democrats differ has nothing to do with falling turnout levels (indeed, if anything, turnout should have gone up because of this factor).

Myth #3: Turnout is going down because people have become so cynical about politics. Nobody trusts the government anymore. Everybody believes it is controlled by special interests and wastes tax money. Guided by these sentiments, citizens do the appropriate thing: they refuse to vote ("it only encourages them").

Reality #3: Increasing cynicism about politics has little, or nothing, to do with declining turnout. This is not because cynicism about politics hasn't increased. It has, reflected in the ever-larger numbers of Americans who don't trust their government and do believe the government is controlled by special interests and wastes their tax money. The reason, rather, is that cynicism about politics characterizes all citizens and does little to distinguish voters from nonvoters. For example, statistical analyses show that, all else equal, someone who doesn't trust the government is no less likely to vote than someone who does trust the government. It therefore follows that trust in government can go down drastically (as it has) and still not depress turnout levels.

The attitudes that do lie behind declining turnout appear to have more to do with a general sense that the government is not responsive to ordinary citizens and a feeling that politics is not worth paying attention to, in even the most minimal fashion. It is thus indifference to politics that is keeping citizens away from the polling booths, rather than active hostility or lack of trust. The latter is simply the common currency of American public opinion; the former is the particular coin of the electoral dropout.

Myth #4: Nonvoters don't vote because they are satisfied with the way things are. Low turnout is nothing to worry about, since lack of participation simply reflects how happy people are. Why vote, when there's nothing to get upset about?

Reality #4: Levels of satisfaction have nothing to do with turnout. There is simply no evidence that how satisfied people are—with the system, with their personal finances, with their life in general—has anything to do with how likely they are to vote. Therefore, a plethora of happy people cannot explain why U.S. voter turnout is so low.

Conversely, there is no reason to believe that those who do currently vote are the "contented" ones, as John Kenneth Galbraith asserts without a shred of evidence in his recent book, "The Culture of Contentment." The reasons why people vote are many and complex, but how happy they are does not appear to be one of them.

Myth #5: Nonvoters don't vote because the policies they prefer aren't represented in contemporary politics. People are staying away from the polls because the two major parties aren't providing them with the policy choices they are interested in. Why vote, when the policies you believe in are not advocated by either the Democrats or the Republicans?

Reality #5: Voters and nonvoters differ very little in terms of their policy preferences. Looking across a wide range of issues—the economic role of government, defense, the environment, social issues like abortion—nonvoters' and voters' positions vary only modestly from one another. Specifically, nonvoters are slightly more liberal than voters on the economic role of government and slightly less liberal on defense, the environment and social issues. But the differences are nowhere very large and, in some cases, barely there at all.

It therefore follows that nonvoting cannot be attributed to nonvoters' thirst for alternative policy positions, since their views appear quite mainstream. It also follows that current levels of nonvoting have little immediate effect on the policies formulated by government, since the policy preferences of an augmented electorate, including all current nonvoters, would differ little from those of the current electorate. Thus, whatever the pernicious effects of low voter participation, biased public policies, at least in the short run, should not be numbered among them.

Myth #6: Republicans keep getting elected because of low turnout. Because nonvoters are drawn disproportionately from groups—the poor, those with low education, blue collar workers, minorities—that are traditional Democratic constituencies, Republican candidates must be benefiting considerably as increased nonvoting removes more and more reliable Democratic voters from the electorate.

Reality #6: The Republicans would have won anyway. Although low turnout has probably been of marginal assistance to some Republican candidates, there is little evidence that this assistance has made the difference between victory and defeat. The key for the Republicans, instead, has been the relatively high levels of support they have generated among the middle class, broadly defined. With such strong support among the bulk of the electorate, the Republicans would have won these elections anyway, regardless of how high or low the level of turnout.

The past two presidential elections, won, respectively, by Ronald Reagan and George Bush, provide a good example. If all the nonvoters had voted, would a Democrat be sitting in the White House today? Not according to data from the University of Michigan's National Election Studies. In both cases, the Republican candidate would still have won—except by a larger margin! Not only is it incorrect to assume that widespread nonvoting is putting Republicans in office, it is also incorrect to assume that the Republicans necessarily gain from low turnout (in certain elections, they might actually do better if more people showed up on election day).

Myth #7: Low black turnout has really been hurting the Democrats. Everyone knows that blacks heavily support the Democratic party. And everyone knows that blacks vote a lot less than whites. It therefore follows that low black turnout must be a critical factor in the Democrats' current problems.

Reality #7: The Democrats would have lost anyway. While levels of black support (generally 85 percent and over) have been important to Democratic candidates, levels of black turnout have not been much of a factor, positive or negative, in Democratic fortunes. Democratic losses, in particular, have almost always been attributable to weak support levels among the white middle class, rather than low black turnout.

Consider, for example, the 1988 defeat of Michael Dukakis by George Bush. If black turnout and white (non-Hispanic) turnout had been the same (black turnout was about 10 percent points lower). Dukakis would have gained about 1,442,000 votes. And if black turnout had somehow been 10 points higher than turnout among whites (that is, 20 points higher than it was in reality), the Democratic gain would have amounted to about 2,884,000 votes. But Dukakis lost the election by more than 7 million votes.

Nor do these results change if one focuses on state-by-state results in the Electoral College. If black turnout had been 20 points higher in every state that Bush won, only Maryland, Illinois, and Pennsylvania would have been added to the Democratic column. Thus, even under these circumstances—which represent unrealistically high levels of black mobilization—Dukakis still would have suffered a lopsided (367-171) loss in the Electoral College. Low black turnout has not been the Democrats' problem: lack of support among the rest of the electorate has been their Achilles' heel.

Myth #8: A lot of elections are decided by levels of voter turnout. One of the most common nuggets of political wisdom is the assertion, after a given election, that "so-and-so lost the election because of low levels of turnout [of group X]" or "so-and-so won the election because of high levels of turnout [of group Y]". These insights are believed to follow from observations (usually true) that the losing candidate was strongly supported by some group whose turnout was low or that the winning candidate was strongly supported by some group whose turnout was high.

Reality #8: Levels of turnout do not, as a rule, make much of a difference to election outcomes. The statement that "turnout was the key" is one of the most common observations of political pundits—and also one of the least likely to be true. The fact is that the intensity of support for different candidates among different groups in the electorate, especially large groups, is far more important than turnout in deciding election outcomes. Indeed, given the Republican and Democratic support levels of different groups (that is, what percentage of white middle class voters supported the Republicans? what percentage of black voters supported the Democrats?), even large increases or decreases in the turnout levels of these groups would be quite unlikely to change the outcome of a typical election.

The contest last year between David Duke and Edwin Edwards for Louisiana governor provides a vivid illustration of this principle. According to many , if not most, reports about the election, Edwards' victory could be attributed to a record high turnout among the black population (and it is true that black turnout was exceptionally high in this election). However, careful analysis of the election results reveals that, given Edwards' support levels among whites (45 percent) and blacks (96 percent), black turnout could have been as low as 16 percent and Edwards still would have won. In other words, he could have won the election with a record low black turnout, instead of a record high black turnout. This illustrates just how hard it is

to change the outcome of an election by raising or lowering the level of turnout.

Myth #9: Registration reform would really help the Democrats. Registration reform would bring millions of Democratic-leaning nonvoters into the political process, proving a tremendous boon for the Democrats and a disaster for the Republicans. (The force of this myth is illustrated by the continuing partisan divisions on this issue in Congress and President Bush's veto of the most recent registration reform bill.)

Reality #9: Registration reform would have virtually no effect on the partisan leanings of the electorate. The political leanings of nonvoters and voters simply do not differ enough for the addition of even millions of nonvoters to make much of a partisan impact. In fact, analysis of survey data reveals that an electorate expanded through registration reform would probably contain only 0.2 percent more voters with Democratic sympathies—hardly enough to justify popping champagne corks down at Democratic headquarters or flying the flag at half-mast at Republican headquarters.

Myth #10: There is nothing we can do to increase voter turnout, given the current sorry state of American politics. Massive nonvoting is a natural response to contemporary American politics, a response we would be foolhardly to try to alter. If people don't want to vote, they won't vote and that's all there is to it.

Reality #10: There are quite a few things we could do to increase voter turnout, some of which are virtually certain to work. The fact of the matter is that most citizens' decisions not to vote are very lightly held and relatively easy to change. For example, simply making it easier to vote, by reforming the personal registration system, would probably result in increased levels of voter turnout. Exactly how much of an increase is not certain, but the weight of the evidence is so strong that we can be virtually certain that the increase would be substantial. My estimate is an increase of about 8 percentage points, which translates into adding about 15 million voters to the electorate—a substantial expansion of citizen participation by any reasonable standard.

It may also be possible to increase turnout by improving voter motivation. It is true that many citizens currently lack even the most elementary political motivation. But we are not talking about turning America's nonvoters into "political junkies" who follow every twist and turn of the campaign. Even a very low level of campaign involvement—perhaps just reading an article or two in the newspaper—or of knowledge about the candidates and issues or of faith the government is paying attention may be enough to turn a nonvoter into a voter. The key is breaking through the extraordinary detachment that many citizens have developed from the political process, so that they are connected, in even a minimal way, to the world of politics.

There are no sure remedies here, but a lot of plausible ones. They range from campaign finance reform to regulating television campaign commercials to issues-based media coverage of campaigns. The idea is to make the campaign process easier to get involved in, more informative, and less susceptible to political manipulation. We have good reasons to believe that if this goal can be accomplished, more citizens would step forward to participate. It does not take, after all, a great deal of motivation to vote, so even small gains in levels of voter involvement and understanding could pay large dividends on election day.

One might well ask: if myth number 10 is wrong and it's so easy to get more people to vote, why is so little being done to increase voter turnout? Part of the answer lies with the nine other myths. They cast such an aura of confusion around the issue and generate so much partisan haggling that increasing citizen participation has been quite difficult. I believe it's time to jettison these myths and bring tens of millions of Americans into the political process. We have little to lose and much to gain from such a move.

CASH MANAGEMENT ACT AMENDMENTS OF 1992

Mr. SANFORD. Mr. President, I rise today in support of the Cash Management Act Amendments of 1992, a bill designed to delay implementation of the Cash Management Improvement Act of 1990 by almost 1 year. I commend my distinguished colleague from Tennessee, Senator SASSER, for his continued attention to this issue and am proud to have joined him in this effort as a cosponsor of this measure.

The 1990 act is intended to minimize the time between the transfer of Federal funds to States and the time those funds are actually used for Federal programs. Simply stated, it insures that each unit of Government loses as little interest opportunity as possible on the use of its own money. In our fury to reduce the deficit and balance our national budget, it is easy to understand the critical importance of wisely using taxpayers' dollars.

The process of formulating, circulating, and implementing regulations under the Cash Management Improvement Act [CMIA] has taken longer than expected. S. 2970 merely extends the date for final issuance of implementing regulations to July 1, 1993. The date for compliance would be extended to July 1, 1993, or the beginning of a State's 1994 fiscal year.

State officials, the National Governors' Association, the National Conference of State Legislatures, and the National Association of State Auditors, Comptrollers, and Treasurers have registered their support for CMIA and have said, in no uncertain terms, that additional time is needed to change their procedures in accordance with compliance rules. As it now stands, once the Department of Treasury issues final regulations, States will have less than 2 months to meet Treasury guidelines.

This noncontroversial measure is both fair and reasonable. I urge my colleagues to move toward its swift adoption.

CHINESE STUDENT PROTECTION ACT

Mr. GORTON. Mr. President, last night the Senate passed the Gorton Chinese Student Protection Act which I introduced on June 4, 1991, 2 years after the bloody massacre at Tiananmen Square.

I would like to begin my remarks by first thanking Senators KENNEDY and SIMPSON for their assistance and support of this measure, and Congressman BARTON from Texas, and Congresswoman PELOSI of California, for their efforts in the House of Representatives. Without their efforts and particularly those of Michael Meyers with Senator KENNEDY and Curtis Hom, formally with my staff, this legislation would have only remained a dream for the thousands of Chinese nationals who will benefit from it. I would also like to request unanimous consent that the full text of S. 1216, the Gorton Chinese Student Protection Act be inserted into the RECORD following my remarks.

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

(See exhibit 1.)

Mr. GORTON. Mr. President, Shen Tong is a young Chinese national who, for the past 3 years, has been a student at Boston University. He is slightly built, with a look of sharp intelligence etched on his features. He stands tall and straight, and moves quickly, with purpose.

It is easy to imagine Shen Tong as a young man facing down a tank in Tiananmen Square in June 1989. It is easy to imagine him, 1 year later, in Beijing, as a student breaking little bottles in defiance of Deng Xio Peng—whose name is a Chinese homophone for little bottles.

Though Shen Tong was in Beijing, and participated in the Democratic movement protests during the Tiananmen disaster, he was not the young man at the tank. And though he may have sympathized with those breaking bottles in Beijing, he was not with them; by that time—indeed, immediately after the Tiananmen massacre, at the wish of his dying father—he had left China and fled to the United States.

But Shen Tong, in spirit if not in body, was with the students in both cases, defying oppression, demanding freedom.

And because of those activities and sympathies, we know where Shen Tong is now, Mr. President. He is in detention in China. He left Boston several weeks ago to return to his home, responding to intimations by the Chinese Government that returning students would be treated fairly and without retribution for their parts in the protests of 1989. When Shen returned, he attempted to establish on office for his organization, the Democracy for China Fund. However, shortly before his first press conference, he was arrested. Shen Tong's terrifying experience has only increased the anxiety of those student dissidents currently residing in the United States.

Mr. President, last night Congress passed legislation which will address

the fear and uncertainty that must grip those Chinese students remaining in the United States since the Tiananmen massacre. Unwilling either to return home to the type of faithless promises that met Shen Tong, and yet unable, legally, to go forward with their lives, schooling, or careers here in America, these young people have been in a 3-year limbo.

There is the young Chinese student who writes that he has been seeking employment here as an actuarial in the insurance industry, a position that requires only a B.S. in mathematics and passing an actuarial exam. This young man holds a B.S. in mathematics, an M.S. in statistics, an M.S. in operations research, has passed four actuarial exams, and has been unable to find even an entry level position in more than a year of searching. Why? Most American companies have policies that correctly give hiring priority to American citizens or permanent residents. There is no prioritization category for those with indeterminate status.

His story is validated by another recent graduate, this one from the Massachusetts Institute of Technology, who tells of the frustration of being unable to sign up for on-campus interviews with the vast majority of American companies who, again, require the minimum status of permanent resident for even preliminary consideration of employment.

A final story, Mr. President, is of a young husband and father who had been a mechanical engineering student at Virginia Tech. Because of his political activities when he was in China, he knows he cannot return there, and would not, at any rate, without a deep-rooted belief in the safety of his family. He knows that, without passage into law of this bill, after expiration of the President's Executive order he will be illegal in this country. Because of his fear of deportation to, and subsequent political persecution in China, this young potential engineer, with a family to support, left Virginia Tech and has taken a more anonymous job—as a delivery boy in Washington, DC.

Mr. President, if we doubt the sincerity of these people's fears and frustrations, be aware that I purposely did not identify any of them—at their request. They anxiously await the time when they may freely and publicly speak out for the cause of democracy in China without fear that in so doing, they might one day to be forced to return to that country before it is safe to do so. Permanent residency will provide the safety net to let them fight for their country of birth without fear of eventual retribution.

The Chinese Student Protection Act will give these people the opportunity to apply for permanent residency, the first step toward citizenship—and, indeed, we could count ourselves fortunate if these talented young people became Americans. But the legislation has a deeper purpose.

The Chinese Student Protection Act will increase the pressure on the Chinese Government to encourage the return of their best and brightest, and to keep their promises of safety and freedom—including intellectual freedom—for those who choose to return. Because for every Shen Tong who is imprisoned, there will be a Chinese student who chooses to remain in the United States. For every promise broken by the Chinese Government, our Government will extend the promise of democracy, a promise that the students know will not be broken.

China cannot withstand this kind of self-imposed purge of the most talented of its young generation. To draw them back, they must behave honorably, for we will have given the students an alternative—to become Americans, where their freedom is ensured, and where their ideals and love of democracy are welcomed as the foundation of our culture.

There is a riveting book—"Life and Death in Shanghai"—that details the horrors of the Chinese cultural revolution. It was written by Nien Cheng, a Chinese woman who was imprisoned by the Government for 6½ years as an enemy of the people. In her memories, she cautions us:

> What was right yesterday became wrong today, and vice versa. Thus the words and actions of a Communist Party official * * * were valid for a limited time only.

The Chinese Student Protection Act will help ensure that the words and actions of the Chinese Government are more than a feather in the wind, that they can be counted on. If time proves otherwise, China stands to lose an irrevocable resource. If China is to move into the 21st century with the rest of the world, they will need the assistance of these young people.

Mr. President, there will be a secondary, but equally important, consequence of the act if it does indeed cause the Chinese Government to welcome its young citizens home without reprisal, and it is this: Since that extraordinary year of 1989, when communism failed universally as a serious political experiment, the world's countries have begun to institute free market policies. The process has been wrenchingly slow and ponderous, for most of these governments have no free market tradition or history on which to draw. There citizenry simply do not know what capitalism looks like.

If China succeeds in convincing its students to return, they will provide a large and invaluable pool of citizens who know firsthand how a free market economy looks and operates. More important, these students will have firsthand knowledge of the tangible and intangible benefits that freedom provides. They will provide the structure, the impetus, and the moral for China as it begins its arduous climb into modern economic policies. With the help of their young American-educated citizens, their journey will prove less daunting than those of many other countries now embarked on the same path. Without those students, China will remain the greatest anachronism of the new world order, a massive, sleeping agrarian giant, isolated in a world that has passed it by. We will all be the poorer if that should happen.

Mr. President, the Chinese Student Protection Act is designed to assist China as it moves into the modern world by insisting that they treat their citizens with dignity and truth or risk losing them. We do not wish to steal away China's premier citizens without cause. But China should make no mistake: This country would be privileged and proud to have as citizens the likes of Shen Tong. Shen Tong is the living embodiment of our own ancestors who fought for our freedom two centuries ago. If it is easy to imagine him at Tiananmen Square, it is equally easy to imagine his spirit at Boston Harbor over 200 years ago, for he would have been there, Mr. President, hurling boxes of tea, the despised symbol of injustice, into the sea.

It may be too late for Shen Tong, for he is still in custody in China. His frantic mother has been unable to discover where he is being kept, or when—or if—he will be released.

I stated earlier that Shen Tong was not the young man standing down the tank in Tiananmen Square. Tragically, that was not just presumption on my part. That courageous young man, who inspired anyone who has ever nurtured the dream of freedom in his heart, was named Wang Wei Ling. He has not been seen since that day of infamy in June 1989. Mr. President, Wang Wei Ling is presumed dead by his compatriots. The same fate could await Shen Tong, and if it does, the Chinese Government should understand clearly that this country will harbor China's expatriates, and welcome them to their new country—America.

In the memory of Wang Wei Ling, and for the cause of Shen Tong, I congratulate and thank the Members of this body for their bi-partisan efforts, and urge the President to immediately sign the Chinese Student Protection Act into law.

EXHIBIT 1

S. 1216

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 "Chinese Student Protection Act of 1992".

SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status

under section 245 of the Immigration and Nationality Act during the application period (as defined in subsection (e)) the following rule shall apply with respect to such adjustment:

(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act for classification under section 203(b)(3)(A)(i) of such Act.

(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act shall not apply; and

(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

(4) The numerical level of section 202(a)(2) of such Act shall not apply.

(5) Section 245(c) of such Act shall not apply.

(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

(1) is a national of the People's Republic of China described in section 1 of Executive Order No. 12711 as in effect on April 11, 1990;

(2) has resided continuously in the United States since April 11, 1990 (other than brief, casual, and innocent absences); and

(3) was not physically present in the People's Republic of China for longer than 90 days after such date and before the date of the enactment of this Act.

(c) CONDITIONS; DISSEMINATION OF INFORMATION.—

(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the President has determined and certified to Congress, before the first day of the application period, that conditions in the People's Republic of China permit aliens described in subsection (b)(1) to return to that foreign state in safety.

(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period, the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b)(1) information respecting the benefits available under this section. To the extent practicable, the Attorney General shall provide notice of these benefits to the last known mailing address of each such alien.

(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act applicable to natives of the People's Republic of China in each applicable fiscal year (as defined in paragraph (3)) shall be reduced by 1,000.

(2) ALLOTMENT IF SECTION 202(E) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

(A) 300 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act in that year, and

(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

(3) APPLICABLE FISCAL YEAR.—

(A) IN GENERAL.—In this subsection, the term "applicable fiscal year" means each fiscal year during the period—

(i) beginning with the fiscal year in which the application period begins; and

(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph (B) equals or exceeds the total number of aliens whose status has been adjusted under section 245 of the Immigration and Nationality Act pursuant to subsection (a).

(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.

(e) APPLICATION PERIOD DEFINED.—In this section, the term "application period" means the 12-month period beginning July 1, 1993.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1993—CONFERENCE REPORT

Mr. BENTSEN. Mr. President, I submit a report of the committee of conference on H.R. 5517 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5517) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenue of said District for the fiscal year ending September 30, 1993, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 24, 1992.)

Mr. ADAMS. Mr. President, I am pleased to present the conference report on the fiscal year 1993 D.C. appropriations bill. This bill was produced by the longest, most difficult conference that I have ever experienced in 4 years as chairman of this subcommittee. It was difficult, not because we did not get along, Senator BOND Could not have been more helpful and our colleagues from the other body were as gracious and accommodating as ever. It was a difficult conference because of the decision we had to make. I know that every subcommittee of the Appropriations Committee has had to choose between very unpleasant and unappealing alternatives in order to produce a bill this year, and ours was certainly no exception. We were also faced with very painful decisions.

The bill we bring back from conference contains a total of $688 million in Federal funds and $4 billion in District of Columbia funds. That is within our allocation under the Budget Act and is $84,000 below the President's request. It is also below the fiscal year 1992 Federal funds appropriation to the District by nearly $12 million.

The agreement includes a requirement that a death penalty initiative be placed on the ballot this November to allow the citizens of the District of Columbia to decide whether or not they want a death penalty in the District. This provision is much the same as the one included by Senator SHELBY when the Senator passed the bill, except that it maintains the principle that homicide remain a local crime. The amendment added by the House would amend the D.C. Code to provide for a penalty of life imprisonment without parole or death for first degree murder.

Mr. President, I want to make clear my position on this issue. I am not opposed to the death penalty, I do not favor imposing the death penalty on the District of Columbia from Capitol Hill. The provision before us is not the way I would prefer for this matter to get on to the ballot. I would prefer that the District Council, or the citizens through the normal initiative process, decide this issue. But this process is preferable to having the Congress simply impose a death penalty without consideration by the citizens of the city.

The conference agreement includes a provision added by the Senator from Mississippi that would have prevented the District from implementing the District's Health Care Benefits Expansion Act. While I am personally opposed to this provision we have a vote in the Senate on the matter and with the vote earlier today in the House it is clear that a majority of both Houses favor this provision, so it is included.

Mr. President, the conference agreement does not include the amendment offered by Senator McConnell which would have legalized the purchase and use of Mace in the District after January 1, 1993. The conferees received a letter from Chairman JOHN WILSON in which he states that he has introduced legislation that would make Mace legal and is committed to its passage before yearend. On that basis we agreed to delete this provision and give the council an opportunity to act.

The most difficult part of what we did was to eliminate $30.8 million that was in both the House and Senate versions of the bill for the Mayor's crime and youth initiative. This cut was necessitated by the President's threat-

ened veto, and OMB scoring of language in the Senate bill, which was contrary to the way CBO scored the same provision. The Office of Management and Budget also raised objections to provisions which were taken in order to accommodate the Mayor's highest priority program. All of these objections left us no choice but to cut these funds from the bill.

I was also disappointed that the conference was not able to include an additional $1,140,000 for the District's Home Purchase Assistance Program for a project in the Columbia Heights neighborhood. This project straddles the 14th Street corridor that was burned out during the 1968 riots and has remained a corridor of broken promises for too long. I drive in that neighborhood on my way home quite often. I think it is a tragedy that we have not moved to try to provide housing and to stabilize this neighborhood. The funds that the Senate recommended were intended to restore the essential unifying element of the neighborhood and its former economic character.

In September 1990 the Columbia Heights Neighborhood Strategic Planning Conference identified the needs of the community as:

First, affordable homeownership;

Second, a balance between rental and homeownership housing;

Third, an increase in neighborhood service and retail establishments; and

Fourth, elimination of vacant lots.

Eight nonprofit community development organizations submitted a proposal with the support of six other team members which have provided design, legal, financial, planning support and technical assistance.

The project calls for construction of 57 units of housing and 21,650 square feet of retail space on four sites. The total estimated development costs for all four sites is $6,400,000.

The Housing Assistance program funds are required in fiscal years 1993 and 1994 to make this dream a reality. This will insure that working families earning annual incomes of less than $25,000 will have homeownership opportunities. It is my intention that this project in the 14th Street corridor should receive the highest priority in the allocation of Housing Assistance funds, and I intend to work to see that this project comes to fruition without delay.

Mr. President, we also were unable to include $250,000 included by the Senate for the Parents as Teachers program in the D.C. Public Schools. We began this program last year at the urging of the Senator from Missouri. The program has been implemented in the Frederick Douglass and Stanton Dwellings Housing projects and has been very well received. In testimony received by the committee school officials stated that the program has been very successful in breaking down the sense of isolation that poor parents often experience, reducing the stress of parenting and make parenting more fun.

Mr. President, one of the few bright spots in our agreement is the establishment of the trauma care fund. The cost of uncompensated hospital care in the District exceeds $200 million annually, with uncompensated trauma care is the most expensive element of this problem. It is also the element that is most closely related to the crime and violence in the District. These funds will be provided to compensate for reimbursed costs and will be available to hospitals to help offset operating results or to meet important capital needs, as the hospital's governing bodies decide.

In a study, requested by your committee in last year's appropriations report, the Commission on Public Health analyzed the care provided at the six level I trauma care facilities and the degree to which the cost of the care given was reimbursed. The Commission found that during the period of the 3 months that they looked at these hospitals sustained losses of $5.4 million in trauma care.

In addition to the study by the city government, the D.C. Hospital Association has estimated that the cost of criminal violence to hospitals in the District is in excess of $20 million. The Hospital Association also estimates that 68 percent of victims of violent crime were uninsured, and 55 percent of the costs were due to crimes involving a firearm.

Mr. President, the trauma care fund is a logical next step to several steps the Congress has taken over the past 4 years. I take strong exception to those who say that the Congress is not doing enough to help the city fight crime.

In fiscal year 1990 we added $31.8 million in a drug emergency appropriation. Included in this appropriation were funds and authority to hire 1,000 new police to the Metropolitan Police Department in order to provide city officials with maximum flexibility to put more officers on the street to deal with the open air drug markets in the city.

It also included $2.6 million to provide for eight additional associate judges on the D.C. Superior Court to help them deal with the increasing caseload of drug arrests and other backlogged felony cases.

On the drug prevention side we included $2 million to begin a program to reach out to pregnant women who were pregnant and get them into treatment. We also included $1.8 million for the public schools to develop after school activities and to develop, what has become a very successful dropout prevention program, called the Options Program. At hearings this year we received testimony hat 80 percent of the kids going through the program are back in school and making passing grades. As a matter of fact the Senate included $350,000 in the 1993 bill to expand the size of this program this year, but had to give it up because of the President's threatened veto.

Mr. President, in fiscal year 1991 we included $26.7 million to continue those programs and included $14 million for the school system, $3 million for programs for border babies, children of substance abusers, a residential after care program for pregnant substance abusers after the baby comes, and to expand the city's outpatient care for drug addicts.

Finally, last year these programs continued within the District's budget without additional Federal funds and we attempted to establish a trauma care fund to address the effect that drugs, and the street violence that they spawn, are having on the financial condition, and the quality of care, at District hospitals.

In November 1991 the Mayor announced a crime and youth initiative with several components and both the House and Senate included $30.8 million in their respective bills to support this initiative, and asked the Mayor to report to us the specific programs for which the funds would be used. However, because of the need to bring this bill within the President's requested amounts we deleted these funds.

So, Mr. President, we have made some very difficult decisions from among some very unpleasant choices. It has not been easy. But for the collegiality of my colleagues it would have been unbearable.

Mr. President, I want to close with a few personal comments. This occasion marks the last time I will have the privilege of bringing a conference report on the D.C. appropriations bill to the floor of the Senate. My congressional career has been blessed with the ability to serve the State of Washington and to be involved in much of the recent history of the city of Washington. This task has been made the more rewarding by the help and support of the other members of the subcommittee Senators FOWLER and KERREY, on our side, have been helpful and supportive throughout this entire process. My junior colleague from the State and Washington, Senator GORTON, who is also a member of the subcommittee, was prompt and interested in our deliberations.

Mr. President, I owe a special note of thanks to my colleague from Missouri, our fine ranking member of the subcommittee, Senator BOND.

The State of Missouri and the District of Columbia share some significant history. In 1934 the people of Missouri sent a somewhat obscure 50-year-old former county official to the Senate. He was soon assigned to the Committee on Appropriations and to the Committee on the District of Columbia, which was a separate standing committee in those days. The Senator

had little patience for interference in local government, having spent his entire political career in local government to that point. So it was that Senator Harry S. Truman resigned from the D.C. Committee saying that the District ought to have home rule.

The relationship between the Show Me State and the Nation's Capital continued when, some 40 years later another Senator from Missouri, our former colleague Tom Eagleton, chaired the Senate D.C. Committee and was instrumental in securing that self-government for the citizens of the District.

So it is with that rich history and close tie that Senator BOND has assumed his role in the subcommittee. He has demonstrated the same inclination for self-determination that his predecessors have—and I want him to know that I, the Mayor and the citizens of this city appreciate his even-handed, hands-off approach to the matters involved in this bill.

Mr. President, with that explanation of the conference agreement, I will yield the floor.

Mr. BOND. Mr. President, we have before us the conference report on H.R. 5517, the D.C. appropriations bill for fiscal year 1993. This agreement was reached Wednesday, September 23, and filed last night. The other body passed it earlier today.

As the senior Senator from Washington has pointed out, H.R. 5517 provides $624,854,400 for the Federal payment to the District and $52,070,000 in Federal contribution to the D.C. retirement funds.

In addition, the conferees recommend the appropriation of $5,645,600 as payment to the District's trauma I care facilities. In 1990, the uncompensated care here in the District totaled $228,000,000.

The General Accounting Office has reported that the cost of trauma care in our Nation's urban centers is threatening to close many of these centers due to runaway costs associated with uncompensated care. These funds will help D.C. trauma I hospitals stay open.

On this issue of the Federal payment, this is not a handout or gift. It is a payment in lieu of taxes to the District from the Federal Government. It is estimated that fully two-thirds of the local economy is beyond the city's taxing authority. So this payment represents nothing more than the Federal Government making good on paying its taxes to the local government.

I am pleased that the conferees have agreed on making the full, scheduled payment to the D.C. retirement fund. This contribution supports the D.C. police officers and firefighters', teachers' and judges' retirement funds. The annual contribution is deposited into trust funds that are invested to generate revenue for future payments to retirees.

Mr. President, the Federal payment, now set by authorizing action at 24 percent of local revenues, continues at a funding level that has increased dramatically since fiscal year 1990, the last year of Marion Barry's administration. In fact, in the 3 years that Sharon Pratt Kelly has been Mayor, the Federal payment to the District has increased 31.11 percent.

I make this point in light of comments attributed to the Mayor today in which she chided Congress for their low Federal payment. With crime and murder and thefts breaking record high numbers and schools, roads and basic services breaking record low numbers, I am convinced, contrary to the Mayor, that having more money does not necessarily make the District a better place to live.

In conclusion, I would like to thank Senator ADAMS for his hard work in crafting an excellent compromise.

And would like to say again how much I appreciate the leadership he has demonstrated throughout the years on behalf of the District of Columbia.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the amendments in disagreement be considered, agreed to en bloc, and that the motion to reconsider that action be laid on the table.

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

The amendments in disagreement considered and agreed to en bloc are as follows:

Resolved, That the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5517) entitled "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1993, and for other purposes.".

Resolved, That the House recede from its disagreement to the amendments of the Senate numbered 14, 26, 27, and 28 to the aforesaid bill, and concur therein.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 4 to the aforesaid bill, and concur therein with an amendment as follows:

Delete the matter stricken by said amendment, and on page 2 of the House engrossed bill strike line 16 down to and including "That" in line 20, and on page 1 of the Senate engrossed amendments, on line 6 strike all after "inside:" down to and including "obligation." in line 10, and insert:

TRAUMA CARE FUND

For a Federal contribution to establish the Trauma Care Fund, $5,561,600, which shall be used to reimburse the actual cost of uncompensated care provided at Level I trauma centers in the District of Columbia: Provided, That no trauma center may receive an amount greater than its proportionate share of the total available in the fund, in any fiscal year, as determined by its proportionate share of total uncompensated care among Level I trauma centers in the District of Columbia for the most recent year such data is available: Provided further, That in no case may any trauma center receive more than 35 percent of the total amount available in any one fiscal year: Provided further, That these funds are available for obligation and expenditure upon enactment of this Act and shall be subject to any modifications that may be enacted in authorizing legislation.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows:

Delete the matter stricken and inserted by said amendment, and on page 3 of the House engrossed bill, H.R. 5517, delete line 15.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

Delete the sum stricken by said amendment and delete the sum inserted by said amendment, and delete line 21 through and including line 25 on page 3 and lines 1 and 2 on page 4 of the House engrossed bill, H.R. 5517.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid bill, and concur therein with an amendment as follows:

Delete the sum stricken by said amendment and delete the sum inserted by said amendment, and delete line 3 through and including line 6 on page 4 of the House engrossed bill, H.R. 5517.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 15 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken by said amendment insert:

: Provided further, That none of the funds appropriated by this Act shall be used to pay any full-duty employee of the District of Columbia Fire and Emergency Medical Services Department who is detailed for more than 30 days annually from his or her assigned position in the Firefighting Division or Emergency Ambulance Division to an unfunded or unauthorized position with the exception of not to exceed four (4) full-duty employees who may be detailed for not to exceed 100 days annually to the Fire Department Training Academy solely for teaching purposes.

, and.

on page 7, after line 1 of the House engrossed bill, H.R. 5517, insert "Including Transfer of Funds)" as a centerhead.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 16 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$713,592,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 17 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$513,552,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and

concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *of which not to exceed $1,600,000 shall be paid within fifteen (15) days of the enactment of this Act directly to the District of Colombia Public Schools Foundation for the continued implementation of the urban model demonstration initiative in mathematics, science, and technology known as the Anacostia Project ($1,000,000) and for the continued operation of the Cooperative Employment Education Project (not to exceed $600,000);*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with the following amendments:

In lieu of the matter proposed by said amendment, insert:

TRAUMA CARE FUND

For the purpose of establishing the Trauma Care Fund, $5,561,600, which shall be used to reimburse the actual cost of uncompensated care provided at Level I trauma centers in the District of Columbia: Provided, That no trauma center may receive an amount greater than its proportionate share of the total available in the fund, in any fiscal year, as determined by its proportionate share of total uncompensated care among Level I trauma centers in the District of Columbia for the most recent year such data is available: Provided further, That in no case may any trauma center receive more than 35 percent of the total amount available in any one fiscal year: Provided further, That these funds are available for obligation and expenditure upon enactment of this Act and shall be subject to any modifications that may be enacted in authorizing legislation.

, and

on page 16 of the House engrossed bill, H.R. 5517, after line insert:

PERSONAL AND NONPERSONAL SERVICES ADJUSTMENTS

The Mayor shall reduce appropriations and expenditures for personal and nonpersonal services in the amount of $30,798,600, within one or several of the various appropriation headings in this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 23 to the aforesaid bill, and concur therein with the following amendments:

In lieu of the matter proposed by said amendment, insert:

SEC. 137. (A). LEGAL DOMICILE.

The first section of the Act entitled "An Act providing for the incorporation of certain persons as Group Hospitalization, Inc.", approved August 11, 1939 (referred to as "the Act"), is amended by adding at the end thereof the following: "The District of Columbia shall be the legal domicile of the corporation.".

(B). REGULATORY AUTHORITY.

(a) IN GENERAL.—Section 5 of the Act is amended to read as follows:

"SEC. 5. The corporation shall be licensed and regulated by the District of Columbia in accordance with the laws and regulations of the District of Columbia.".

(b) REPEAL.—The Act is amended by striking section 7.

(C). 3. REIMBURSEMENT OF REGULATORY COSTS BY THE CORPORATION.

The Act (as amended by section 2 of this Act) is amended by inserting after section 6 the following new section:

"SEC. 7. The corporation shall reimburse the District of Columbia for the costs of insurance regulation (including financial and market conduct examinations) of the corporation and its affiliates and subsidiaries by the District of Columbia.

(D). EFFECTIVE DATE.

The amendments made by this section shall take effect on the date of enactment of this Act and expire on September 30, 1993, or upon the enactment of specific authorizing legislation.

, and

"on page 33 line 12 of the House engrossed bill, H.R. 5517, delete "or any other".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 24 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 138 Notwithstanding any other law, the District of Columbia Board of Elections and Ethics shall place on the ballot, without alteration, at a general, special, or primary election to be held within 90 days after the date of enactment of this Act, the following initiative:

SHORT TITLE

"Mandatory Life Imprisonment or Death Penalty for Murder in the District of Columbia.

SUMMARY STATEMENT

This initiative measure, if passed, would increase the penalty for first degree murder in the District of Columbia.

A person convicted of this crime would be sentenced either to death or life imprisonment without the possibility of parole.

LEGISLATIVE TEXT

The legislative text of the initiative shall read as follows—

Be it enacted by the Electors of the District of Columbia, that this measure be cited as the "Mandatory Life Imprisonment or Death Penalty for Murder in the District of Columbia."

"Section 801 of the Act entitled 'An Act to establish a code of law for the District of Columbia,' approved March 3, 1901 (D.C. Code 22-2404(a)), is amended—

"(1) by amending subsection (a) to read as follows:

'(a) Punishment of murder in the first degree shall be life imprisonment without the possibility of parole, or death.';

"(2) by striking subsection (b) and redesignating subsection (c) as subsection (b); and

"(3) by adding at the end the following new subsections:

'(c) PENALTY.—A person who commits an offense under subsection (a) shall be punished by death or life imprisonment. A sentence of death under this subsection may be imposed in accordance with the procedures provided in subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l).

'(d) MITIGATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider whether any aspect of the defendant's character, background, or record or any circumstance of the offense that the defendant may proffer as a mitigating factor exists, including the following factors:

'(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired.

'(2) DURESS.—The defendant was under unusual and substantial duress.

'(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal (pursuant to section 908 of the Act entitled "An Act to establish a code of law for the District of Columbia," approved March 3, 1901 (D.C. Code 22-105)) in the offense, which was committed by another, but the defendant's participation was relatively minor.

'(e) AGGRAVATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider any aggravating factor for which notice has been provided under subsection (f), including the following factors:

'(1) KILLING IN FURTHERANCE OF DRUG TRAFFICKING.—The defendant engaged in the conduct resulting in death in the course of or in furtherance of drug trafficking activity.

'(2) KILLING IN THE COURSE OF OTHER SERIOUS VIOLENT CRIMES.—The defendant engaged in the conduct resulting in death in the course of committing or attempting to commit an offense involving robbery, burglary, sexual abuse, kidnapping, or arson.

'(3) MULTIPLE KILLINGS OR ENDANGERMENT OF OTHERS.—The defendant committed more than one offense under this section, or in committing the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

'(4) INVOLVEMENT OF FIREARM.—During and in relation to the commission of the offense, the defendant used or possessed a firearm (as defined in paragraph (6) of D.C. Law 1-85 (D.C. Code 6—2302(6))).

'(5) PREVIOUS CONVICTION OF VIOLENT FELONY.—The defendant has previously been convicted of an offense punishable by a term of imprisonment of more than 1 year that involved the use or attempted or threatened use of force against a person or that involved sexual abuse.

'(6) KILLING WHILE INCARCERATED OR UNDER SUPERVISION.—The defendant at the time of the offense was confined in or had escaped from a jail, prison, or other correctional or detention facility, was on pre-trial release, or was on probation, parole, supervised release, or other post-conviction conditional release.

'(7) HEINOUS, CRUEL OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse of the victim.

'(8) PROCUREMENT OF THE OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

'(9) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for receiving, or in the expectation of receiving or obtaining, anything of pecuniary value.

'(10) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

'(11) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

'(12) KILLING OF PUBLIC SERVANT.—The defendant committed the offense against a public servant—

'(A) while the public servant was engaged in the performance of his or her official duties;

'(B) because of the performance of the public servant's official duties; or

'(C) because of the public servant's status as a public servant.

'(13) KILLING TO INTERFERE WITH OR RETALIATE AGAINST WITNESS.—The defendant committed the offense in order to prevent or inhibit any person from testifying or providing information concerning an offense, or to retaliate against any person for testifying or providing such information.

'(f) NOTICE OF INTENT TO SEEK DEATH PENALTY.—If the government intends to seek the death penalty for an offense under this section, the attorney for the government shall file with the court and serve on the defendant a notice of such intent. The notice shall be provided a reasonable time before the trial or acceptance of a guilty plea, or at such later time as the court may permit for good cause. The notice shall set forth the aggravating factor or factors set forth in subsection (e) and any other aggravating factor or factors that the government will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

'(g) JUDGE AND JURY AT CAPITAL SENTENCING HEARING.—A hearing to determine whether the death penalty will be imposed for an offense under this section shall be conducted by the judge who presided at trial or accepted a guilty plea, or by another judge if that judge is not available. The hearing shall be conducted before the jury that determined the defendant's guilt if that jury is available. A new jury shall be impaneled for the purpose of the hearing if the defendant pleaded guilty, the trial of guilt was conducted without a jury, the jury that determined the defendant's guilt was discharged for good cause, or reconsideration of the sentence is necessary after the initial imposition of a sentence of death. A jury impaneled under this subsection shall have 12 members unless the parties stipulate to a lesser number at any time before the conclusion of the hearing with the approval of the court. Upon motion of the defendant, with the approval of the attorney for the government, the hearing shall be carried out before the judge without a jury. If there is no jury, references to 'the jury' in this section, where applicable, shall be understood as referring to the judge.

'(h) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—No presentence report shall be prepared if a capital sentencing hearing is held under this section. Any information relevant to the existence of mitigating factors, or to the existence of aggravating factors for which notice has been provided under subsection (f), may be presented by either the government or the defendant, regardless of its admissibility under the rules governing the admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The information presented may include trial transcripts and exhibits. The attorney for the government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the government shall open the argument, the defendant shall be permitted to reply, and the government shall then be permitted to reply in rebuttal.

'(i) FINDINGS OF AGGRAVATING AND MITIGATING FACTORS.—The jury shall return special findings identifying any aggravating factor or factors for which notice has been provided under subsection (f) and which the jury unanimously determines have been established by the government beyond a reasonable doubt. A mitigating factor is established if the defendant has proven its existence by a preponderance of the evidence, and any member of the jury who finds the existence of such a factor may regard it as established for purposes of this section regardless of the number of jurors who concur that the factor has been established.

'(j) FINDING CONCERNING A SENTENCE OF DEATH.—If the jury specially finds under subsection (i) that 1 or more aggravating factors set forth in subsection (e) exist, and the jury further finds unanimously that there are no mitigating factors for that the aggravating factor or factors specially found under subsection (i) outweigh any mitigating factors, the jury shall recommend a sentence of death. In any other case, the jury shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

'(k) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, before the return of a finding under subsection (j), shall instruct the jury that, in considering whether to recommend a sentence of death, it shall not consider the race, color, religion, national origin, or sex of the defendant or any victim, and that the jury is not to recommend sentence of death unless it has concluded that it would recommend a sentence of death for such a crime regardless of race, color, religion, national origin, or sex of the defendant or any victim. The jury, upon the return of a finding under subsection (j), shall also return to the court a certificate, signed by each juror, that the race, color, religion, national origin, or sex of the defendant or any victim did not affect the juror's individual decision and that the individual juror would have recommended the same sentence for such a crime regardless of race, color, religion, national origin, or sex of the defendant or any victim.

'(l) IMPOSITION OF A SENTENCE OF DEATH.—Upon a recommendation under subsection (j) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence of life imprisonment without the possibility of parole.

'(m) REVIEW OF A SENTENCE OF DEATH.—

'(1) The defendant may appeal a sentence of death under this section by filing a notice of appeal of the sentence within the time provided for filing a notice of appeal of the judgment of conviction. An appeal of a sentence under this subsection may be consolidated within an appeal of the judgment of conviction and shall have priority over all noncapital matters in the court appeals.

'(2) The court of appeals shall review the entire record in the case including the evidence submitted at trial and information submitted during the sentencing hearing, and the special findings returned under subsection (i). The court of appeals shall uphold the sentence if it determines that the sentence of death was not imposed under the influences of passion, prejudice, or any other arbitrary factor, that the evidence and information support the special findings under subsection (i), and that the proceedings were otherwise free of prejudicial error that was properly preserved for review.

'(3) In any other case, the court of appeals shall remand the case for reconsideration of the sentence or imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor described in subsection (e) remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds that the remaining aggravating factor or factors that were found to exist outweigh any mitigating factors. The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

'(n) IMPLEMENTATION OF SENTENCE OF DEATH.—A person sentenced to death under this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal. The Marshal shall supervise implementation of the sentence in the manner prescribed by the law of a State designated by the court. The Marshal may use State or local facilities, may use the services of an appropriate State or local official or of a person such an official employs, and shall pay the costs thereof in an amount approved by the Attorney General.

'(o) SPECIAL BAR TO EXECUTION.—A sentence of death shall not be carried out upon a woman while she is pregnant.

'(p) CONSCIENTIOUS OBJECTION TO PARTICIPATION IN EXECUTION.—No employee of the District of Columbia government, and no person providing services to the government under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term "participate in any execution" includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

'(q) APPOINTMENT OF COUNSEL FOR INDIGENT CAPITAL DEFENDANTS.—A defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, under this section, shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in subsection (v) has occurred, if the defendant is or becomes financially unable to obtain adequate representation. Counsel shall be appointed for trial representation as provided in chapter 26 of title 11 of the District of Columbia Code (D.C. Code 11-2601 et seq.), and at least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel. Except as otherwise provided in this section, chapter 26 of title 11 of the District of Columbia Code (D.C. code 11-2601 et seq.) shall apply to appointments under this section.

'(r) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death under this section has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the government shall promptly notify the court that imposed the

sentence. The court, within 10 days of receipt of such notice, shall proceed to make determination whether the defendant is eligible for appointment of counsel for subsequent proceedings. The court shall issue an order appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel. The court shall issue an order denying appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation or that the defendant rejected appointment of counsel with an understanding of the consequences of that decision. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

'(s) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under subsection (q) or (r), at least one counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

'(t) CLAIMS OF INEFFECTIVENESS OF COUNSEL IN COLLATERAL PROCEEDINGS.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 23-110 of the District of Columbia Code in a case under this section shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

'(u) TIME FOR COLLATERAL ATTACK ON DEATH SENTENCE.—A motion under section 23-110 of the District of Columbia Code attacking a sentence of death under this section, or the conviction on which it is predicated, shall be filed within 90 days of the issuance of the order under subsection (r) appointing or denying the appointment of counsel for such proceedings. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. Such a motion shall have priority over all non-capital matters in the district court, and in the court of appeals on review of the district court's decision.

'(v) STAY OF EXECUTION.—The execution of a sentence of death under this section shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 23-110 of the District of Columbia Code. The stay shall run continuously following imposition of the sentence and shall expire if—

'(1) the defendant fails to file a motion under section 23-110 of the District of Columbia Code within the time specified in subsection (u), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

(2) upon completion of district court and court of appeals review under section 23-110 of the District of Columbia Code, the Supreme court disposes of a petition for certiorari in a manner that leaves the capital sentence undisturbed, or the defendant fails to file a timely petition for certiorari; or

(3) before a district court, in the presence of counsel and after having been advised of the consequences of such a decision, the defendant waives the right to file a motion under section 23-110 of the District of Columbia Code.

'(w) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (v) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

'(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

'(2) the failure to raise the claim is the result of governmental action in violation of the Constitution or laws of the United States, the result of the Supreme Court's recognition of a new Federal right that is retroactively applicable, or the result of the fact that the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

'(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

'(x) COMMUNTATION OF SENTENCE OF DEATH.—The Mayor shall have power to commute a sentence of death under this section to a sentence of life imprisonment, without parole.

'(y) "DEFINITIONS.—For purposes of this section—

1'(1) "State" includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States;

'(2) "offense", as used in paragraphs (2), (5), and (13) of subsection (e) and in paragraph (5) of this subsection means an offense under the law of the District of Columbia, another State, or the United States;

'(3) "drug trafficking activity" means a felony punishable under D.C. Law 4-29 (D.C. Code 33-501 et seq.) or a pattern or series of acts involving one or more such felonies;

'(4) "robbery" means obtaining the property of another by force or threat of force;

'(5) "burglary" means entering or remaining in a building or structure in violation of the law of the District of Columbia, another State, or the United States, with the intent to commit an offense in the building or structure;

'(6) "sexual abuse" means any conduct proscribed by chapter 109A of title 18, United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States;

'(7) "arson" means damaging or destroying a building or structure through the use of fire or explosives;

'(8) "kidnapping" means seizing, confining, or abducting a person, or transporting a person without his or her consent;

'(9) "pre-trial release", "probation", "parole", "supervised release", and "other post conviction condition release", as used in subsection (e)(6), mean any such release, imposed in relation to a charge or conviction of an offense under the law of the District of Columbia, another State, or the United States; and

'(10) "public servant" means any employee, agent, officer, or official of the District of Columbia, another State, or the United States, or an employee, agent, officer, or official of a foreign government who is within the scope of section 1116 of title 18, United States Code.'.".

MEASURE PLACED ON CALENDAR

Mr. BENTSEN. Mr. President, I ask unanimous consent that H.R. 5851, a bill to establish a commission on information technology and paperwork reduction just received from the House be placed on the calendar.

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

GARNISHMENT EQUALIZATION ACT

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 685, S. 316 the Garnishment Equalization Act, the committee's substitute be agreed to, and the bill as amended be deemed read three times, passed, and the motion to reconsider be laid on the table, and that any statements on this item appear at the appropriate place in the RECORD.

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

The bill (S. 316), as amended, was deemed to have been read three times and passed, as follows:

S. 316

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 "Garnishment Equalization Act of 1992".

SEC. 2. GARNISHMENT OF FEDERAL EMPLOYEES' PAY.

(a) IN GENERAL.—Subchapter II of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5520a. Garnishment of pay

"(a) For purposes of this section, the term—

"(1) 'agency' means each agency of the Federal Government, including—

"(A) an Executive agency, except for the General Accounting Office;

"(B) the United States Postal Service and the Postal Rate Commission;

"(C) any agency of the judicial branch of the Government; and

"(D) any agency of the legislative branch of the Government, including the General Accounting Office, each office of a Member of Congress, a committee of the Congress, or other office of the Congress;

"(2) 'employee' means an employee of an agency or member of the uniformed services as defined under section 2101(3);

"(3) 'legal process' means any writ, order, summons, or other similar process in the nature of garnishment, that—

"(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to State or local law; and

"(B) orders the employing agency of such employee to withhold an amount from the pay of such employee, and make a payment

of such withholding to another person, for a specifically described satisfaction of a legal debt of the employee, or recovery of attorney's fees, interest, or court costs; and

"(4) 'pay' means—

"(A) basic pay, premium pay paid under subchapter V, any payment received under subchapter VI, VII, or VIII, severance and back pay paid under subchapter IX, sick pay, incentive pay, and any other compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay or otherwise; and

"(B) does not include awards for making suggestions.

"(b) Subject to the provisions of this section and the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person.

"(c)(1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail, return receipt requested, or by personal service, upon—

"(A) the appropriate agent designated for receipt of such service of process pursuant to the regulations issued under this section; or

"(B) the head of such agency, if no agent has been so designated.

"(2) Such legal process shall be accompanied by sufficient information to permit prompt identification of the employee and the payments involved.

"(d) Whenever any person, who is designated by law or regulation to accept service of process to which an agency is subject under this section, is effectively served with any such process or with interrogatories, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is made, send written notice that such process has been so served (together with a copy thereof) to the affected employee at his or her duty station or last-known home address.

"(e) No employee whose duties include responding to interrogatories pursuant to requirements imposed by this section shall be subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by such employee in connection with the carrying out of any of such employee's duties which pertain directly or indirectly to the answering of any such interrogatory.

"(f) Agencies affected by legal process under this section shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

"(g) Neither the United States, an agency, nor any disbursing officer shall be liable with respect to any payment made from payments due or payable to an employee pursuant to legal process regular on its face, provided such payment is made in accordance with this section and the regulations issued to carry out this section.

"(h)(1) Subject to the provisions of paragraph (2), if an agency is served under this section with more than one legal process with respect to the same payments due or payable to an employee, then such payments shall be available, subject to section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673), to satisfy such processes in priority based on the time of service, with any such process being satisfied out of such amounts as remain after satisfaction of all such processes which have been previously served.

"(2) A legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any legal process to which an agency is subject under this section.

"(i) The provisions of this section shall not modify or supersede the provisions of sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) concerning legal process brought for the enforcement of an individual's legal obligations to provide child support or make alimony payments.

"(j)(1) Regulations implementing the provisions of this section shall be promulgated—

"(A) by the President or his designee for each Executive agency, except—

"(i) with regard to members of the armed forces as defined under section 2101, the President or, at his discretion, the Secretary of Defense shall promulgate such regulations; and

"(ii) with regard to employees of the United States Post Service, the President or, at his discretion, the Postmaster General shall promulgate such regulations;

"(B) jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives, or their designee, for the legislative branch of the Government; and

"(C) by the Chief Justice of the United States or his designee for the judicial branch of the Government.

"(2) Such regulations shall provide that an agency's administrative costs in executing a garnishment action may be added to the garnishment, and that the agency may retain costs recovered as offsetting collections.".

"(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of chapters for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5520 the following:

"5520a. Garnishment of pay.".

(2) Section 410(b) of title 39, United States Code, is amended—

(A) by redesignating the second paragraph (9) (relating to the Inspector General Act of 1978) as paragraph (10); and

(B) by adding at the end thereof the following new paragraph:

"(11) section 5520a of title 5.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

AWARDS FOR FEDERAL EMPLOYEES

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 616, H.R. 2263, relating to certain programs under which awards may be made to Federal employees for superior accomplishments; that the bill be deemed read three times, passed; and the motion to reconsider laid on the table; and the title amendment agreed to; further, that any statements appear in the RECORD at the appropriate place.

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

So, the bill (H.R. 2263) to amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or costs savings disclosures, and for other purposes, had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. AWARDS FOR COST SAVINGS DISCLOSURES.

(a) REPEAL OF LIMITATION.—Section 4514 of title 5, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 45 of title 5, United States Code, is amended by striking ut the item relating to section 4514.

(c) AUTHORITY TO MAKE AWARDS.—Awards may be made under subchapter II of chapter 45 of title 5, United States Code, on and after the date of the enactment of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was deemed read the third time and passed.

The title was amended so as to read: "An Act to amend chapter 45 of title 5, United States Code, to authorize awards for cost savings disclosures."

NATIONAL TRIAD PROGRAM ACT

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 693, S. 2484, a bill to establish research, development, and dissemination programs to assist State and local agencies in preventing crime against the elderly, and for other purposes; that any statements with respect to passage of this bill be inserted at the appropriate place in the RECORD; and that the bill be deemed read a third time, passed, and the motion to reconsider be laid upon the table.

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

So the bill (S. 2484) was deemed read the third time, and passed, as follows:

S. 2484

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 Triad Program Act".

SEC. 2 FINDINGS.

The Congress finds that—

(1) older Americans are among the most rapidly growing segments of our society;

(2) currently, the elderly comprise 15 percent of our society, and predictions are that by the turn of the century they will constitute 18 percent of our Nation's population;

(3) older Americans find themselves uniquely situated in our society, environmentally and physically;

(4) many elderly Americans are experiencing increased social isolation due to fragmented and distant familial relations, scattered associations, limited access to transportation, and other insulating factors;

(5) physical conditions such as hearing loss, poor eyesight, lessened agility, and chronic and debilitating illnesses often con-

tribute to an older person's susceptibility to criminal victimization;

(6) our elders are too frequently the victims of abuse and neglect, violent crime, property crime, consumer fraud, medical quackery, and confidence games;

(7) studies have found that elderly victims of violent crime are more likely to be injured and require medical attention than are younger victims;

(8) victimization data on crimes against the elderly are incomplete and out of date, and data sources are partial, scattered, and not easily obtained;

(9) although a few studies have attempted to define and estimate the extent of elder abuse and neglect, both in their homes and in institutional settings, many experts believe that this crime is substantially underreported and undetected;

(10) similarly, while some evidence suggests that the elderly may be targeted in a range of fraudulent schemes, neither the Uniform Crime Report nor the National Crime Survey collects data on individual- or household-level fraud;

(11) law enforcement officers and social service providers come from different disciplines and frequently bring different perspectives to the problem of crimes against the elderly;

(12) these differences, in turn, can contribute to inconsistent approaches to the problem and inhibit a genuinely effective response;

(13) there are, however, a few efforts currently under way that seek to forge partnerships to coordinate criminal justice and social service approaches to victimization of the elderly;

(14) the Triad program, sponsored by the National Sheriffs' Association (NSA), the International Association of Chiefs of Police (LACP), and the American Association of Retired Persons (AARP), is one such effort;

(15) recognizing that older Americans have the same fundamental desire as other members of our society to live freely, without fear or restriction due to the criminal element, the Federal Government seeks to expand efforts to reduce crime against this growing and uniquely vulnerable segment of our population; and

(16) our goal is to support a coordinated effort among law enforcement and social service agencies to stem the tide of transgenerational violence against the elderly and to support media and nonmedia strategies aimed at increasing both public understanding of the problem and the elderly persons skills in preventing crime against themselves and their property.

SEC. 3. PURPOSE.

The purpose of this Act is to address the problem of crime against the elderly in a systematic and effective manner with a program of practical and focused research, development, and dissemination designed to assist States and units of local government in implementing specific programs of crime prevention, victim assistance, citizen involvement, and public education that offer a high probability of improving the coordinated effectiveness of law enforcement and social service efforts. The effects of local coalitions, such as the Triad model being piloted in a number of areas by National Sheriffs' Association, International Association of the Chiefs of Police, and American Association of Retired Persons, are of particular interest.

SEC. 4. NATIONAL ASSESSMENT AND DISSEMINATION.

(a) IN GENERAL.—The Director of the National Institute of Justice (referred to as the "Director") shall conduct a national assessment of—

(1) the nature and extent of crimes against the elderly;

(2) the needs of law enforcement, health, and social service organizations in working to prevent, identify, investigate, and provide assistance to victims of those crimes; and

(3) promising strategies to respond effectively to those challenges.

(b) MATTERS TO BE ADDRESSED.—The national assessment made pursuant to subsection (a) shall address—

(1) the analysis and synthesis of data from a range of sources in order to develop accurate information on the nature and extent of crimes against the elderly, including identifying and conducting such surveys and other data collection efforts as are needed and designing a strategy to keep such information current over time;

(2) the problem of the most vulnerable and hard-to-reach elderly who are in poor health, are living alone or without family nearby, or are living in high crime areas;

(3) the problem of elderly who are abused and neglected, sometimes in the home and sometimes in health care facilities, sometimes subjected to physical abuse and at other times to verbal aggression and neglect;

(4) the problem of fear of victimization, which inhibits the freedom of the elderly and can make them prisoners in their homes;

(5) the identification of strategies and techniques that have been shown to be effective, or appear to hold promise of being effective, in responding to the problems described in this subsection and in preventing, reducing, and ameliorating the impact of crime against the elderly;

(6) the analysis of the factors that enhance or inhibit development of a coordinated response by law enforcement, health care, and social service providers to crimes against the elderly and the treatment of elderly victims; and

(7) the research agenda needed to develop a comprehensive understanding of the problems of crimes against the elderly, including the changes anticipated in the crimes themselves and appropriate responses as our society increasingly ages, and the identification and evaluation of effective and fiscally feasible approaches to prevent and reduce victimization of our Nation's elderly citizens.

(c) DISSEMINATION.—Based on the results of the national assessment and analysis of successful or promising strategies in dealing with the problems described in subsection (b) and other problems, including coalition efforts such as the Triad programs referred to in section 2 and 3, the Director shall disseminate the results through reports, publications, clearinghouse services, public service announcements, and programs of evaluation, demonstration, training, and technical assistance.

SEC. 5. PILOT PROGRAMS.

(a) AWARDS.—The Director may make awards to coalitions of local law enforcement agencies, victim service providers, and organizations representing the elderly for pilot programs and field tests of particularly promising strategies and models for forging partnerships for crime prevention and service provision based on the concepts of the Triad model, which can then be evaluated and serve as the basis for further demonstration and education programs.

(b) ELIGIBILITY.—Pilot programs funded under this section may include existing general service coalitions of law enforcement, victim service, and elder advocate organizations that wish to use additional funds to work at a particular problem in their community, such as fraud, burglary, or abuse and neglect, or to target a particular geographic area in need of intensive services.

SEC. 6. EVALUATION AND DISSEMINATION AWARDS.

In conjunction with the national assessment under section 4 and the pilot programs under section 5, the Director may make awards to—

(1) coalitions of national law enforcement, victim service, and elder advocate organizations, for the purposes of providing training and technical assistance in implementing pilot programs, including programs based on the concepts of the Triad;

(2) research organizations, for the purposes of—

(A) investigating the types of elder victimization shown by the national assessment to present particularly critical problems or to be emerging crimes about which little is known;

(B) evaluating the effectiveness of selected pilot programs; and

(C) conducting the research and development identified through the national assessment as being critical; and

(3) public service advertising coalitions, for the purposes of mounting a program of public service advertisements to increase public awareness and understanding of the issues surrounding crimes against the elderly and promoting ideas or programs to prevent them.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $6,000,000 to carry out this Act, of which—

(1) up to $2,000,000 may be used to fund up to 20 pilot programs;

(2) up to $1,000,000 may be used to fund a national training and technical assistance effort;

(3) up to $1,000,000 may be used to develop public service announcements; and

(4) up to $2,000,000 may be used for the national assessment, the evaluation of pilot programs, and the carrying out of the research agenda.

Mr. JOHNSTON. Mr. President, it gives me particular pleasure to pass the National Triad Program Act in the Senate, because that bill happens to have been my bill and involves protection of the elderly through programs involving what we call the triad program between the local law enforcement agencies, the AARP, and the elderly, under which the elderly will have a closer liaison with law enforcement.

There are programs, for example, whereby the elderly will leave their name for a call in the morning; let us say at 9:30, they will get a call from the local sheriff or police, and if there is no answer, they will be called back in 15 minutes. If there is no answer at that time, law enforcement people will send someone out to check on them.

So, Mr. President, this bill will help the elderly in their relationship to law enforcement, will give them some assurance about their fear of being victims of crime, as the elderly are victimized by crime so often, and it will give them some freedom from fear, because fear with the elderly of crime is one of the most debilitating of all if you would call it a disease or a disability of the elderly.

So I am very pleased, Mr. President, that this bill was passed.

HEAD START IMPROVEMENT ACT

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of H.R. 5630, the Head Start Improvement Act, that the Senate proceed to its immediate consideration; the bill be deemed read a third time and passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 5630) was deemed read a third time, and passed.

HEAD START IMPROVEMENT ACT

Mr. KENNEDY. Mr. President, the Head Start Improvement Act is a necessary step to refine and improve the highly successful Head Start Program. This legislation makes several worthwhile improvements to Head Start. They will expand the program to more effectively serve low-income children and their families.

We know that the Head Start Program works. It allows disadvantaged children to start elementary school on a level playing field. This community-based, one-stop-shopping program has become a hallmark of effective Federal action.

Under current law, however, Head Start grantees may not purchase facilities. This bar causes unnecessary barriers in serving children in many communities across the country. It results in complicated redtape tying providers' hands, and unnecessary costs to the Federal Government.

For years, local programs have invested in renovating someone else's facility, only to be told by the owners—sometimes just 1 year later—that they must find new space. Countless schools have found that space originally allocated for Head Start classrooms was needed to accommodate their own expanding enrollments. Churches decide that renovated Head Start classrooms are needed for Sunday school classrooms or child care facilities.

In desperation, many Head Start Programs have turned to less than stable portable and mobile units, which they purchase as equipment. Some of these mobile units were among the buildings devastated by Hurricane Andrew in Florida last month. The Head Start Improvement Act removes this unwarranted prohibition and enables local Head Start programs to purchase facilities with the approval of the Secretary of Health and Human Services.

This legislation also addresses a major safety issue for Head Start children. It requires the Department of Health and Human Services to issue regulations for the purchase and safe operation of vehicles used by Head Start agencies. Currently, there are no Federal transportation guidelines for Head Start programs. Many children in both rural and urban communities are transported in a range of vehicles every day, and it is important to require HHS to establish minimum safety requirements.

All children deserve a safe and healthy start. Head Start has a remarkable record of ensuring that its children receive checkups and necessary treatments. Last year, 99 percent of Head Start participants received dental checkups, compared to only 5 percent of impoverished children not enrolled in such programs. This bill gives local Head Start programs the option of building on this exemplary record by permitting younger siblings of Head Start children to use the program's health services.

Family assistance has always been an integral component of Head Start's services; 55 percent of Head Start families are headed by a single parent and 65 percent have an income below $6,000 a year. This bill helps Head Start families by requiring local agencies to offer parents both literacy and parenting skills training.

In addition, the Head Start Improvement Act includes provisions which guarantee quality improvement funds to all local grantees this year. It provides greater discretion to the Secretary to waive the program's in-kind matching requirement, to ensure that communities facing difficult economic situations are not precluded from serving additional children. And it provides increased monitoring of new Head Start programs.

This legislation makes the Nation's premier child development program even more effective for children, families, and communities. It helps a good program become even better, and I urge the Senate to approve it.

Mr. COATS. Mr. President, I agree that it is very important to allow Head Start programs greater stability by enabling them to purchase buildings. I understand that many programs have been forced to move after investing in costly renovations or have children in mobile or portable units that could pose potential safety hazards. I support the Head Start Improvement Act which allows Head Start programs to purchase facilities—however, I want to make it absolutely clear that Head Start programs intending to purchase a facility must provide assurances to the Secretary that no funds will be diverted from Head Start's most important mission: Providing comprehensive children's services to a maximum number of our poorest children. It is my understanding that since program purchases will have to be approved by the Secretary that HHS will ensure that services to children remain the key priority. Is that the understanding of the Senator?

Mr. KENNEDY. I believe we are in complete agreement. This bill makes an important change by allowing Head Start programs to purchase facilities. This authority should prove quite cost effective because it will, as you mentioned, reduce the need for continuous and costly renovations. It is my hope that this will lead to increased program stability and enhanced community rootedness. However, in order for programs to purchase their buildings, this legislation requires the Secretary's approval. If this way, it allows the Secretary to guarantee that program funds will not be displaced by the purchase of a facility. Obviously, our first priority is serving children. I believe that programs will be best able to accomplish the goal of expanding enrollment, by offering the children the benefits of a stable and safe facility.

I thank the Senator from Indiana for his concern, his support for this legislation, and his long-term commitment to the Head Start Program.

AUTHORIZING PRODUCTION OF SENATE DOCUMENTS

Mr. JOHNSTON. Mr. President, on behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution on production of Senate documents and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 347) to authorize document production in *United States* v. *Charles H. Keating, Jr., et al.*

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, the Department of Justice has requested that the Select Committee on Ethics produce copies of documents for use at trial in the case of United States of America versus Charles H. Keating, Jr., which is pending in the U.S. District Court for the Central District of California. In this criminal proceeding, Mr. Keating and his son are charged with racketeering, conspiracy, bank and securities fraud, misapplication of funds, and interstate transportation of stolen property, relating to the failure of Lincoln Savings and Loan Association. The Justice Department is requesting from the Ethics Committee copies of a number of documents that the committee subpoenaed from Mr. Keating in the course of the committee's own inquiry, which it completed last year.

Unlike other committees of the Senate, the Ethics Committee has standing authority, in certain circumstances, to provide law enforcement authorities with investigative records without obtaining, in individual cases, approval of the Senate. The

basis for that standing authority is the committee's duty under section 2(a)(4) of Senate Resolution 338 of the 88th Congress to refer potential violations of law to the proper law enforcement authorities. The committee has correctly understood that authority to embrace, by fair implication, the corresponding authority from the Senate to provide to law enforcement authorities records which support, or should be considered in connection with, a referral.

When the Ethics Committee does not refer a matter to the Department of Justice, as it did not following the completion of its inquiry concerning Mr. Keating, then the committee may not use its authority under Senate Resolution 338 to provide documents to the Department of Justice. In the absence of a referral, the committee requires authorization under Senate Rule XI, in the same manner as other Senate committees, to produce records to the Department of Justice.

The committee has determined, in accord with Senate practice under rule XI, that production of the records would promote the interests of justice in a manner consistent with the privileges of the Senate, and has recommended the Senate's agreement to this resolution.

The PRESIDING OFFICER. Without objection, the resolution and the preamble are agreed to.

So, the resolution (S. Res. 347) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 347

Whereas, in the case of United States v. Charles H. Keating, Jr., et al., No. Cr. 91-1021-MRP & 92-110 MRP, pending in the United States District Court for the Central District of California, the United States Attorney has requested that the Select Committee on Ethics produce documents that the Committee obtained by subpoena;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Select Committee on Ethics is authorized to produce documents in United States v. Charles H. Keating, Jr., et al., except concerning matters for which a privilege should be asserted.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING PRODUCTION OF RECORDS

Mr. JOHNSTON. Mr. President, on behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution on authorization for the production of Senate records and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 348) to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, a law enforcement entity has requested access to documents obtained by the Permanent Subcommittee on Investigations during its investigation into allegations of corruption in professional boxing.

In keeping with the Senate's customary practice with regard to similar requests, this resolution would authorize the chairman and ranking minority member of the subcommittee to provide to this entity, and other law enforcement and regulatory entities that may make similar requests, subcommittee records of its investigation on allegations of corruption in professional boxing.

The PRESIDING OFFICER. Without objection, the resolution and preamble are agreed to.

So, the resolution (S. Res. 348) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 348

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation of allegations of corruption in professional boxing;

Whereas, a law enforcement entity has requested access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide, to law enforcement and regulatory entities requesting access, records of the Subcommittee's investigation of allegations of corruption in professional boxing.

Mr. HATFIELD. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, FISCAL YEAR 1993—CONFERENCE REPORT

Mr. JOHNSTON. Mr. President, I submit a report of the committee of conference on H.R. 5373 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5373) making appropriations for energy and water development of the fiscal year ending September 30, 1993, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD, of September 24, 1992.)

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the report be considered adopted and a motion to reconsider laid on the table, that the Senate concur en bloc in the amendments of the House to the Senate amendments numbered 2, 6, 7, 9, 17, 18, 19, 22, 27, 31, 35, 37, 39, 43, 44, 45, 46, 47, 57, and 58, and that a motion to reconsider that action be laid on the table.

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

So, the conference report was agreed to.

The Senate concurred en bloc in the amendments of the House to the Senate amendments numbered 2, 6, 7, 9, 17, 18, 19, 22, 27, 31, 35, 37, 39, 43, 44, 45, 46, 47, 57, and 58; as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Los Angeles County Drainage Area Water Conservation and Supply, California, $200,000;

Los Angeles River Watercourse Improvement, California, $300,000;

Rancho Palos Verdes, California, $400,000;

Miami River Sediments, Florida, $50,000;

Monroe County (Smathers Beach), Florida, $500,000;

Casino Beach, Illinois, $110,000;

Chicago Shoreline, Illinois, $600,000;

McCook and Thornton Reservoirs, Illinois, $3,500,000;

Lake George, Hobart, Indiana, $260,000;

Little Calumet River Basin (Cady Marsh Ditch), Indiana, $170,000;

Mississippi River, Vicinity of St. Louis, Missouri, $500,000;

Ste. Genevieve, Missouri, $750,000;

Passaic River Mainstem, New Jersey, $10,000,000; and

Red River Waterway, Shreveport, Louisiana, to Daingerfield, Texas, $2,800,000:

Provided further, That using $320,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the cost-shared feasibility study of the Calleguas Creek, California, project based on the reconnaissance phase analyses of full intensification benefits resulting from a change in cropping patterns to more intensive crops within the floodplain. The feasibility study will consider the agricultural benefits using both traditional and nontraditional methods, and will include an evaluation of the benefits associated with the environmental protection and restoration of Mugu Lagoon: Provided further, That using $200,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to conduct a cost-shared feasibility study for flood control at Norco Bluffs, California, based on flood related flows and channel migration which have caused bank destabilization and damaged private property and public utilities in the area: Provided further, That using $300,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to expand the study of long-term solutions to shoaling problems in Santa Cruz harbor, California, by incorporating the study of erosion problems between the harbor and the easterly limit of the City of Capitola, particularly beach-fill type solutions which use sand imported from within or adjacent to the harbor: Provided further, That using $210,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to include the study of Alafia River as part of the Tampa Harbor, Alafia River and Big Bend, Florida, feasibility study: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake a study of a greenway corridor along the Ohio River in New Albany, Clarksville, and Jeffersonville, Indiana, using $125,000 of the funds appropriated under this heading in Public Law 101-101 for Jeffersonville, Indiana, $127,000 of the funds appropriated under this heading in Public Law 101-514, and $250,000 of the funds appropriated under this heading in Public Law 102-104: Provided further, That using $450,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the development of a comprehensive waterfront plan for the White River in central Indianapolis, Indiana: Provided further, That using $250,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to conduct a feasibility study of the Muddy River, Boston, Massachusetts: Provided further, That using $50,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake feasibility phase studies for the Clinton River Spillway, Michigan, project: Provided further, That using $600,000 of the funds appropriated herein and $900,000 of the funds appropriated under this heading in Public Law 102-104, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue preconstruction engineering and design of the St. Louis Harbor, Missouri and Illinois, project: Provided further, That using $3,500,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue preconstruction engineering and design of the Raritan River Basin, Green Brook Sub-Basin, New Jersey, project in accordance with the design directives for the project contained in Public Law 100-202: Provided further, That using $440,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to review and evaluate the plan prepared by the City of Buffalo, New York, to relieve flooding and associated water quality problems in the north section of the city and to recommend other cost-effective alternatives to relieve the threat of flooding: Provided further, That using $150,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake a reconnaissance study of the existing resources of the Black Fox and Oakland Spring wetland areas in Murfreesboro, Tennessee, and examine ways to maintain and exhibit the wetlands, including an environmental education facility: Provided further, That using $950,000 of the funds appropriated under this heading in Public Law 102-104, the Secretary of the Army, acting through the Chief of Engineers, is directed to complete preconstruction engineering and design for the Richmond Filtration Plant, Richmond, Virginia, project: Provided further, That using $250,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the study of the disposition of the current Walla Walla, Washington, District headquarters, including preparation of the environmental assessment and design work associated with demolition of the building: Provided further, That using $2,800,000 of the funds appropriated herein, the Secretary of the Army is authorized, in partnership with the Department of Transportation, and in coordination with other Federal agencies, including the Department of Energy, to evaluate the results of completed research and development associated with an advanced high speed magnetic levitation transportation system and to prepare and present documents summarizing research findings and supporting the resultant recommendations concerning the Federal role in advancing United States maglev technology: Provided further, That using $300,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to initiate the feasibility phase of the study of the Devil's Lake Basin, North Dakota, and shall address the needs of the area for water management; stabilized lake levels, to include inlet and outlet controls; water supply; water quality; recreation; and enhancement and conservation of fish and wildlife: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is directed to utilize up to $100,000, within available funds, to initiate studies to determine the necessary remedial measures to restore the environmental integrity of the lake area and channel depths necessary for small recreational boating in the vicinity of Drakes Creek Park on Old Hickory Lake, Tennessee: Provided further, That using $500,000 of available funds, the Secretary of the Army, acting through the Chief of Engineers, is directed to initiate preconstruction engineering and design; and environmental studies for the Kaumalapau Harbor, Lanai, Hawaii, project

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows;

In lieu of the sum named in said amendment, insert: *$1,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$1,230,503,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Kissimmee River, Florida, $8,000,000;

O'Hare Reservoir, Illinois, $3,000,000;

Des Moines Recreational River and Greenbelt, Iowa, $2,500,000;

Red River Basin Chloride Control, Texas and Oklahoma, $6,000,000;

Wallisville Lake, Texas, $500,000; and

LaConner, Washington, $870,000:

Provided further, That using $7,653,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the project to correct seepage problems at Beaver Lake, Arkansas, and all costs incurred in carrying out that project shall be recovered in accordance with the provisions of section 1203 of the Water Resources Development Act of 1986: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is directed to base all economic analyses of the Sacramento River Flood Control (Deficiency Correction), California, project on the benefits of the entire project, rather than the benefits of individual increments of the project: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, shall expend $500,000 of the funds appropriated herein and additional amounts as required from previously appropriated funds to continue plans and specifications, environmental documentation, and the comprehensive hydraulic modeling necessary to achieve to the maximum extent practicable in fiscal year 1993 the project to restore the riverbed gradient at Mile 206 of the Sacramento River in California, for purposes of stabilizing the level of the river and establishing the proper hydraulic head to facilitate new fish protection facilities, the planning, design and implementation of which are integrally related to the planning, design and implementation of the project to restore the flood-damaged riverbed gradient: Provided further, That using $660,000 in funds previously appropriated in Public Law 102-104, the Secretary of the Army, acting through the Chief of Engineers, is directed to develop a floodplain management planning model for the Yolo Bypass and adjacent areas as deemed appropriate, except, as provided in section 321 of Public Law 101-640, such funds shall not be subject to cost-sharing requirements. The one-time construction of operation and maintenance facilities associated with the Yolo Basin Wetlands, Sacramento River, California, project shall be included as part of project costs for the purposes of cost-sharing authorized by law: Provided further, That using $4,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to complete preconstruction engineering and design for the San Timoteo feature of the Santa Ana River Mainstem, California, project: Provided further, That using funds available in this Act or any previous appropriations Act, the Secretary of the Army shall undertake at Federal expense such actions as are necessary to ensure the safety and integrity of the work performed under Contract Number DACW05-86-C-0101 for the Walnut Creek, California, flood control project: Provided further, That using $700,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue work on project modifications for the improvement of the environment, as part of the Anacostia River Flood Control and Navigation project, District of Columbia and Maryland, under the authority of section 1135 of Public Law 99-662, as amended: Provided further, That using $3,000,000 of the funds appropriated under this heading in Public Law 101-514, the Secretary of the Army, acting through the Chief of Engineers, is directed to complete real estate appraisals and make offers

to willing sellers for the purchase of land at Red Rock Lake and Dam, Iowa, no later than October 31, 1993, in accordance with Public Law 99–190: Provided further, That with $22,500,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue to undertake structural and nonstructural work associated with the Barbourville, Kentucky, and the Harlan, Kentucky, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project authorized by section 202 of Public Law 96–367: Provided further, That with $20,565,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue to undertake structural and nonstructural work associated with the Matewan, West Virginia, element of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project authorized by section 202 of Public Law 96–367: Provided further, That with $23,000,000 of prior year appropriations to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue construction of the Lower Mingo County, West Virginia, element of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project authorized by section 202 of Public Law 96–367: Provided further, That with $1,500,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is directed to initiate and complete construction, using continuing contracts, of the Hatfield Bottom, West Virginia, element of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project authorized by section 202 of Public Law 96–367: Provided further, That with $1,195,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is directed to expedite completion of specific project reports for McDowell County, West Virginia, Upper Mingo County, West Virginia, Wayne County, West Virginia, Upper Tug Fork Tributaries, West Virginia, Tug Fork, West Virginia, and Pike County, Kentucky: Provided further, That no fully allocated funding policy shall apply to construction of the Matewan, West Virginia, Lower Mingo County, West Virginia, Hatfield Bottom, West Virginia, Barbourville, Kentucky, and Harlan, Kentucky, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project; and specific project reports for McDowell County, West Virginia, Upper Mingo County, West Virginia, Wayne County, West Virginia, Tug Fork Tributaries, West Virginia, Upper Tug Fork, West Virginia, and Pike County, Kentucky: Provided further, That using $400,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue construction of the Salyersville cutthrough as authorized by Public Law 99–662, section 401(e)(1), in accordance with the Special Project Report for Salyersville, Kentucky, concurred in by the Ohio River Division Engineers on or about July 26, 1989: Provided further, That using $7,700,000 of the funds appropriated herein and $4,300,000 of the funds appropriated in Public Law 102–104, the Secretary of the Army, acting through the Chief of Engineers, is directed to incorporate parallel protection along the Orleans and London Avenue Outfall Canals into the authorized Lake Pontchartrain and Vicinity, Louisiana, Hurricane Protection project and award continuing contracts for construction of this parallel protection to be cost-shared as part of the overall project, not separately, in accordance with the cost-sharing provisions outlined in Public Law 89–298 and Public Law 102–104. Therefore, agreements executed prior to June 1, 1992, between the Federal Government and the local sponsors for the authorized project shall suffice for this purpose and will not require any additional local cost-sharing agreements or supplements: Provided further, That using $4,400,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue design and construction of the Ouachita River levees, Louisiana, project in an orderly but expeditious manner including rehabilitation or replacement at Federal expense of all deteriorated drainage structures which threaten the security of this critical protection: Provided further, That the project for flood control, Sowashee Creek, Meridian, Mississippi, authorized by the Water Resources Development Act of 1986 (Public Law 99–662) is modified to authorize and direct the Secretary of the Army, acting through the Chief of Engineers, to construct the project with an expanded scope recreation plan, as described in the Post Authorization Change Report of the Chief of Engineers dated August 1991, and at a total project cost of $31,994,000 with an estimated first Federal cost of $19,706,000 and an estimated non-Federal cost of $12,288,000. The Federal share of the cost of the recreation features shall be 50 percent exclusive of lands, easements, rights-of-way and relocations: Provided further, That using $175,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to provide sewage disposal hookup for the Crosswinds Marina at the B. Everett Jordan Dam and Lake, North Carolina, project: Provided further, That using $300,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue work on the Feature Design Memorandum for the Forest Ridge Peninsula Recreation Area at the Falls Lake, North Carolina, project: Provided further, That using $5,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue work on the New York Harbor Collection and Removal of Drift, New York and New Jersey, project including the continuation of engineering and design of the remaining portions of the Brooklyn 2, Kill Van Kull, Shooters Island, Bayonne, and Passaic River Reaches, the completion of the design memoranda for the Arthur Kill, New York, and Arthur Kill, New Jersey, reaches, the continuation of construction on the Weehawken-Edgewater, New Jersey and Brooklyn 2 reaches, and the completion of construction on the Jersey City North 2 reach: Provided further, That using $1,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to initiate construction of the project for flood control, Molly Ann's Brook, New Jersey, in compliance with cost-sharing provided in section 1062 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240): Provided further, That using $2,000,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to pay such sums or undertake such measures as are necessary to compensate for costs of repair, relocation, restoration, or protection of public and private property and facilities in Washington and Idaho damaged by the drawdown undertaken in March 1992 by the United States Army Corps of Engineers at the Little Goose and Lower Granite projects in Washington: Provided further, That using not to exceed $2,000,000 of the funds appropriated herein for the Columbia River Juvenile Fish Mitigation, Washington, project, the Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake advanced planning and design of modifications to public and private facilities that may be affected by operation of John Day Dam at minimum operating pool (elevation 257 feet): Provided further, That using $2,500,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed upon dissolution of the injunction by the United States District Court, to conduct the necessary engineering and design, and prepare the plans and specifications to resume construction of the Elk Creek Dam in Oregon: Provided further, That the Secretary of the Army is directed to permit the non-Federal sponsor of recreation facilities at Willow Creek Lake in Oregon to contribute, in lieu of cash, all or any portion of its share of the project with work in-kind, including volunteer labor and donated materials and equipment: Provided further, That with $2,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake further construction aspects of the Bethel, Alaska, Bank Stabilization Project as authorized by Public Law 99–662 including but not limited to the installation of steel whalers and additional rock toe protection to the pipe pile, bulkheads and other areas vulnerable to collapse: Provided further, That no fully allocated funding policy shall apply to construction of the Bethel, Alaska, Bank Stabilization Project and to the greatest extent possible the work described herein should be compatible with the authorized project: Provided further, That using funds made available in this Act or any previous appropriations Act, the Secretary of the Army shall construct a project for streambank protection along 2.2 miles of the Tennessee River adjacent to Sequoyah Hills Park in Knoxville, Tennessee, at a total cost of $600,000, with an estimated first Federal cost of $450,000 and an estimated first non-Federal cost of $150,000: Provided further, That with $3,000,000 of the funds appropriated herein, the Secretary of the Army, actiong through the Chief of Engineers, is authorized and directed to excavate the St. George Harbor, Alaska, entrance to −20 MLLW in accordance with the cost-sharing provisions in Public Law 99–662

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 17 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

: Provided further, That $2,285,000 of the funds appropriated herein shall be used by the Secretary of the Army, acting through the Chief of Engineers, to continue the development of recreational facilities at Hansen Dam, California: Provided further, That $2,000,000 of the funds appropriated herein, to remain available until expended, shall be used by the Secretary of the Army, acting through the Chief of Engineers, to continue the development of recreational facilities at Sepulveda Dam, California: Provided further, That using $2,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the repair and rehabilitation of the Flint River, Michigan, flood control project: Provided further, That $40,000 of the funds appropriated herein shall be used by the Secretary of the Army, acting through the Chief of Engineers, to continue the project for removal of silt and aquatic growth at Sauk Lake, Minnesota: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use up to $1,200,000 of available funds to undertake high priority recreational improvements at the Skiatook Lake, Oklahoma, project: Provided further, That using $1,500,000

of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue work on measures needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River below Fort Peck Dam, Montana, as authorized by section 33 of the Water Resources Development Act of 1988: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is authorized to operate and maintain at Federal expense the Passaic River flood warning system element of the Passaic River Mainstem Project, New Jersey, prior to construction of the project, and using $350,000 of the funds appropriated herein, the Secretary shall operate and maintain such element: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is directed to work with the U.S. environmental Protection Agency to begin the immediate cleanup of the Ashtabula River, Ohio: Provided further, That using $600,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to update the project Master Plan for the Raystown Lake, Pennsylvania, project: Provided further, That using $1,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan, design, and dredge an access channel and berthing area for the vessel NIAGARA at Erie Harbor, Pennsylvania, in an area known as the East Canal: Provided further, That the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to use up to $5,000,000 of available funds to undertake necessary maintenance of the Kentucky River Locks and Dams 5–14, Kentucky, prior to transfer to such facilities to the Commonwealth of Kentucky pursuant to the Memorandum of Understanding executed in 1985 concerning the Kentucky River Locks and Dams 5–14: Provided further, That using $1,000,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to construct and maintain bank stabilization measures along the west bank of the Calcasieu River Ship Channel in Louisiana from mile 11.5 through mile 15.5

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of "475.5" named in said amendment, insert: *475.6*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

None of the funds in this Act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 or any subsequent manual adopted without notice and public comment.

Furthermore, the Corps of Engineers will continue to use the Corps of Engineers 1987 Manual, as it has since August 17, 1991, until a final wetlands delineation manual is adopted.

None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 22 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

General Provisions

CORPS OF ENGINEERS—CIVIL

SEC. 101. Public Law 101–302 (104 Stat. 213) is amended by striking the words "to meet the present emergency needs" under the General Expenses appropriation title of Corps of Engineers—Civil.

SEC. 102. Any funds heretofore appropriated and made available in Public Law 99–88 for construction of facilities at the Mill Creek recreation area of the Tioga-Hammond Lakes, Pennsylvania, project; in Public Law 100–71 for initiation of land acquisition activities as described in section 1114 of Public Law 99–662; and in Public Law 101–101 for construction of the Satilla River Basin, Georgia, project, and for acquisition of an icebreaking boat and equipment for the Kankakee River, Illinois, project, may be utilized by the Secretary of the Army in carrying out projects and activities funded by this Act.

SEC. 103. The Secretary of the Army, acting through the Chief of Engineers, is directed to maintain in caretaker status the navigation portion of the Fox River System in Wisconsin. The Assistant Secretary of the Army for Civil Works shall take over negotiations with the State of Wisconsin for the orderly transfer of ownership and operation of the Fox River Lock System to a non-Federal entity. These negotiations shall commence immediately, be conducted in good faith, and be completed as soon as possible. The terms of a negotiated settlement shall be presented to Congress immediately upon the completion of these negoitations. The settlement shall include provisions for both the logistics and timing of the transfer of the Lock System, as well as a negotiated recommendation for monetary compensation to the non-Federal entity for the repair and rehabilitation of damage and deterioration associated with all appropriate portions of the Fox River System which are being transferred.

SEC. 104. The requirements of section 103(a)(1)(A) of the Water Resources Development Act of 1986 (33 U.S.C. 2213), as pertains to the Moorefield and Petersburg, West Virginia, flood protection projects, are deemed satisfied, in consideration of the transfer of Grandview State Park by the State of West Virginia to the National Park Service for inclusion in the New River Gorge National River.

SEC. 105. None of the funds appropriated in this Act shall be used to implement the proposed rule for the Army Corps of Engineers amending regulations on "ability to pay" (33 CFR Part 241), published in the Federal Register, vol. 56, No. 114, on Thursday, June 13, 1991.

SEC. 106. In fiscal year 1993, the Secretary shall advertise for competitive bid at least 7,500,000 cubic yards of the hopper dredge volume accomplished with government-owned dredges in fiscal year 1992.

Notwithstanding the provisions of this section, the Secretary is authorized to use the dredge fleet of the Corps of Engineers to undertake projects when industry does not perform as required by the contract specifications or when the bids are more than 25 percent in excess of what the Secretary determines to be a fair and reasonable estimated cost of a well equipped contractor doing the work or to respond to emergency requirements.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 27 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

: Provided further, That pursuant to section 406(c)(2) of Public Law 101–628, the Secretary of the Interior is directed to reimburse, in an amount not to exceed $800,000, the City of Prescott, Arizona, for funding advanced by Prescott, Arizona, to the Bureau of Reclamation for hydrological studies required by section 406(c)(1) of Public Law 101–628: Provided further, That the prohibition against obligating funds for construction until after sixty days from the date the Secretary transmits a report to the Congress in Accordance with section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C 509) is waived for the Bitter Root Project, Como Dam, Montana, to allow for an earlier start of emergency repair work

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 31 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$8,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 35 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 206. Subsection (a) of section 7 of the Federal Water Project Recreation Act (79 Stat. 216 16 U.S.C. 460l–18) is amended by deleting the Proviso from the first sentence and by changing the colon after the word "purposes" to a period.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

$3,015,793,000 to remain available until expended, of which $94,800,000 shall be available only for making competitive, merit-review awards to academic research facilities, to the extent otherwise authorized by law.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$1,286,320,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 43 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

NUCLEAR WASTE DISPOSAL FUND

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $275,071,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: Provided, That of the amount herein appropriated, within available funds, not to exceed $5,000,000 may be provided to the State of Nevada, for the sole purpose in the conduct of its oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97–425, as amended: Provided further, That of the amount herein appropriated, not more than $6,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: Provided further, That the distribution of funds herein provided among the affected units of

local government shall be determined by the Department of Energy (DOE) and made available to the State and affected units of local government by direct payment: Provided further, That within 90 days of the completion of each Federal fiscal year, each entity shall provide certification to the DOE, that all funds expended from such direct payment monies have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: Provided further, That none of the funds herein appropriated may be used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913: Provided further, That none of the funds herein appropriated may be used for litigation expenses: Provided further, That grant funds are not to be used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act: Provided further, That of the amount appropriated herein, up to $3,700,000 shall be available for infrastructure studies and other research and development work to be carried out by the Universities in Nevada, Reno, and Las Vegas, and the Desert Research Institute, and at least $750,000 to continue funding for the Mobile Sampling Platform developed and operated by the Environmental Research Center at the University of Nevada, Las Vegas. Funding to the universities will be administered by the DOE through a cooperative agreement.

In paying the amounts determined to be appropriate as a result of the decision in Consolidated Edison Company of New York v. Department of Energy 870 F.2d 694 (D.C. Cir. 1989), the Department of Energy shall pay interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund. Such payments may be made by credits to future utility payments into the Fund.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 44 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of $4,523,249,000 named in said amendment, insert: *$4,568,749,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 45 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$34,028,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 46 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$4,831,547,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 47 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$2,584,301,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 57 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SEC. 507. (a) Hereafter, funds made available by this Act or any other Act for fiscal year 1993 or for any other fiscal year may be available for conducting a test of a nuclear explosive device only if the conduct of that test is permitted in accordance with the provisions of this section.

(b) No underground test of a nuclear weapon may be conducted by the United States after September 30, 1992, and before July 1, 1993.

(c) On and after July 1, 1993, and before January 1, 1997, an underground test of a nuclear weapon may be conducted by the United States—

(1) only if—

(A) the President has submitted the annual report required under subsection (d);

(B) 90 days have elapsed after the submittal of that report in accordance with that subsection; and

(C) Congress has not agreed to a joint resolution described in subsection (d)(3) within that 90-day period; and

(2) only if the test is conducted during the period covered by the report.

(d)(1) Not later than March 1, of each year beginning after 1992, the President shall submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, in classified and unclassified forms, a report containing the following matters:

(A) A schedule for resumption of the Nuclear Testing Talks with Russia.

(B) A plan for achieving a multilateral comprehensive ban on the testing of nuclear weapons on or before September 30, 1996.

(C) An assessment of the number and type of nuclear warheads that will remain in the United States stockpile of active nuclear weapons on September 30, 1996.

(D) For each fiscal year after fiscal year 1992, an assessment of the number and type of nuclear warheads that will remain in the United States stockpile of nuclear weapons and that—

(i) will not be in the United States stockpile of active nuclear weapons;

(ii) will remain under the control of the Department of Defense; and

(iii) will not be transferred to the Department of Energy for dismantlement.

(E) A description of the safety features of each warhead that is covered by an assessment referred to in subparagraph (C) or (D).

(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C), as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

(G) An assessment of the number and type of nuclear weapons tests, not to exceed 5 tests in any period covered by an annual report under this paragraph and a total of 15 tests in the 4-fiscal year period beginning with fiscal year 1993, that are necessary in order to ensure the safety of each nuclear warhead in which one or more modern safety features are installed pursuant to the plan referred to in subparagraph (F).

(H) A schedule, in accordance with subparagraph (G), for conducting at the Nevada test site, each of the tests enumerated in the assessment pursuant to subparagraph (G).

(2) The first annual report shall cover the period beginning on the date on which a resumption of testing of nuclear weapons is permitted under subsection (c) and ending on September 30, 1994. Each annual report thereafter shall cover the fiscal year following the fiscal year in which the report is submitted.

(3) For the purposes of paragraph (1), "joint resolution" means only a joint resolution introduced after the date on which the Committees referred to in that paragraph receive the report required by that paragraph the matter after the resolving clause of which is as follows: "The Congress disapproves the report of the President on nuclear weapons testing, dated ." (the blank space being appropriately filled in).

(4) No report is required under this subsection after 1996.

(e)(1) Except as provided in paragraphs (2) and (3), during a period covered by an annual report submitted pursuant to subsection (d), nuclear weapons may be tested only as follows:

(A) Only those nuclear explosive devices in which modern safety features have been installed pursuant to the plan referred to in subsection (d)(1)(F) may be tested.

(B) Only the number and types of tests specified in the report pursuant to subsection (d)(1)(G) may be conducted.

(2)(A) One test of the reliability of a nuclear weapon other than one referred to in paragraph (1)(A) may be conducted during any period covered by an annual report, but only if—

(i) within the first 60 days after the beginning of that period, the President certifies to Congress that it is vital to the national security interests of the United States to test the reliability of such a nuclear weapon; and

(ii) within the 60-day period beginning on the date that Congress receives the certification, Congress does not agree to a joint resolution described in paragraph (B).

(B) For the purposes of subparagraph (A), "joint resolution" means only a joint resolution introduced after the date on which the Congress receives the certification referred to in that subparagraph the matter after the resolving clause of which is as follows: "The Congress disapproves the testing of a nuclear weapon covered by the certification of the President dated ." (the blank space being appropriately filled in).

(3) The President may authorize the United Kingdom to conduct in the United States, within a period covered by an annual report, one test of a nuclear weapon if the President determines that it is in the national interests of the United States to do so. Such a test shall be considered as one of the tests within the maximum number of tests that the United States is permitted to conduct during that period under paragraph (1)(B).

(f) No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.

(g) In the computation of the 90-day period referred to in subsection (c)(1) and the 60-day period referred to in subsection (e)(2)(A)(ii), the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded.

(h) In this section, the term "modern safety feature" means any of the following features:

(1) An insensitive high explosive (IHE).

(2) Fire resistant pits (FRP).

(3) An enhanced detonation safety (ENDS) system.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 58 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 508. Notwithstanding any other provision of this Act, $5,000,000 of the funds appropriated in Title I shall be available for the Central Maine Water Supply Project, to remain available until September 30, 1993, and to become available only upon enactment into law of authorizing legislation.

Mr. JOHNSTON. Mr. President, I am pleased to present the conference report on the fiscal year 1993 Energy and Water Development appropriation bill. This conference report on the bill, H.R. 5373 passed the House of Representa-

tives by a vote of 245 yeas to 143 nays on September 17, 1992. The bill passed the Senate on August 3, 1992, by a voice vote, and passed the House of Representatives on June 17, by a vote of 365 to 51.

The conference on this bill was held on Tuesday, September 15, and the conference report was printed in the CONGRESSIONAL RECORD on Wednesday, September 16.

The conference agreement provides $22,005,643,000 in new budget obligational authority. This amount is $413,645,000 less than the budget estimates. It is $681,579,000 over the House-passed bill, and $197,000 over the Senate-passed bill.

Title I of the bill provides appropriations for the U.S. Army Corps of Engineers Civil Works Program. The conference agreement provides $3,667,133,000 in new budget authority which is $3,463,000 over the House bill and $34,603,000 over the Senate figure.

For title II, the bureau of Reclamation in the Department of the Interior, the conference agreement includes a total of $816,715,000, which is $9,110,000 below the House bill and $9,384,000 more than the Senate-passed bill.

A total of $17,158,759,000 is provided for title III for the Department of Energy programs, projects, and activities. Of this amount, $12,118,625,000 is for atomic energy defense activities, the same as the President's budget request.

Title IV provides appropriations for independent agencies and commissions and totals $363,036,000. Of this amount, $190 million is for the Appalachian Regional Commission, $21 million is for the Nuclear Regulatory Commission, $135 million for the Tennessee Valley Authority and $2,060,000 for the Nuclear Waste Technical Review Board.

Mr. President, on the amendments in disagreement, I will move that the Senate concur in the amendments of the House to the amendments of the Senate en bloc. If the Senate agrees to this action, then action on the Energy and Water appropriations bill for fiscal year 1993 will be complete and the bill will be cleared to be sent to the White House. The major issue involved in the amendments in disagreement concerns amendment No. 57. The House of Representatives has concurred in the amendment of the Senator from Oregon [Mr. HATFIELD] concerning testing of nuclear weapons. The amendment of the House is the same as the Senate approved last Friday in connection with the Armed Services Committee's authorizing legislation. It is clear that the Nuclear Testing Program as provided in that amendment is the will of the Senate and I will therefore propose that that language be approved as part of the Energy and Water appropriation bill.

I recommend to the Senate that this conference report be approved promptly so as to complete action on this appropriation bill and clear it for the President's consideration and approval.

Mr. President, I wish to express our appreciation and thanks to our House colleagues led by the chairman of the House subcommittee, the distinguished gentleman from Alabama [Mr. BEVILL], and the ranking minority member, the distinguished gentleman from Indiana [Mr. MYERS]. I also want to thank again my friend and able colleague from the State of Oregon [Mr. HATFIELD]. It is always a joy to work with him. Also, I want to express my appreciation to all of the Senate conferees who are members of our subcommittee also.

Mr. President, I wish to commend my distinguished ranking minority member, Senator HATFIELD, in the preparation and passage of the energy-water bill and adoption of the conference report.

First of all, it is a monumental accomplishment, particularly considering the fact that it includes the superconducting super collider, which I believe is the most important science project in the world today.

The Congress, the Senate, and the House, had the courage, in stringent budget times, to recognize the importance of science, to recognize that if this country is to move forward, especially in difficult times, that it must be on the wings of science, on the wings of technological proficiency more than anything else. And the Congress had the courage to face up to that.

Second, Mr. President, I would note that the distinguished Senator from Oregon [Mr. HATFIELD] has been for years the proponent of a nuclear test ban moratorium. It has been his purpose to seek international peace, first of all, and, second, to bring down the role of nuclear weapons. And to that end he has pointed out over and over again to the Senate that the testing of nuclear weapons is one of those things that has interfered with international peace. He particularly speaks well for himself in that respect.

We had some differences at the margin on what that moratorium should say. But over a period of time, that was presented to the Senate, and the Senate very strongly, with a very strong margin, concurred with the distinguished Senator from Oregon.

I think it is a signal victory for him. I think it is a strong statement of the Senate and of America for our desire to bring down the level of nuclear weapons in the world and control their proliferation, to control their testing.

The Senator from Oregon has been at the forefront of that and I think he really deserves to be congratulated. We send congratulations to Senators on very small victories sometimes. This is a major victory on his part and I think he deserves the accolades which I am sure the public at large will give him.

So I give him my own personal congratulations and particularly my thanks for helping get this bill through.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon [Mr. HATFIELD] is recognized.

Mr. HATFIELD. Mr. President, I appreciate very deeply the comments made by my chairman of this very important Subcommittee on Appropriations.

Senator JOHNSTON and I have been partners on this bill for many years now, both as a minority and as a majority person in the Senate, serving now as his ranking member.

I think his words also indicate a great deal about Senator JOHNSTON himself. I think that when an adversary to a point of view can stand and make outstanding remarks about another person, it indeed is not only a sign of being a very gracious person but a great statesman.

I might add that I think that Senator JOHNSTON and his great quest for safety testing really added a great deal to that amendment. He did not agree with certain parts of it, but it took his contribution, as that of Senator EXON from the authorizing committee, as that of the majority leader of the Senate, Senator MITCHELL.

One can fight for a cause, but if there is not sufficient bipartisan support in a body of this kind, it just can become a very futile exercise. So it was, indeed, a team effort.

I must say, Senator COHEN of the authorizing committee as well, and Senator NUNN, the chairman of the authorizing Committee on Armed Services, all contributed to the ultimate victory on this issue.

I thank it is very historic that the Congress of the United States now, for the fifth time, has made a very clear-cut statement about underground testing: Two rollcall votes in the House of Representatives, two rollcall votes in the U.S. Senate, and the voice vote tonight in now finalizing this issue.

I hope the President of the United States, who now plays the next significant role in the progress of this legislation, will carefully review not only the importance of this bill in general, but particularly what the Senator from Louisiana has pointed out about the super collider and the importance it has to future science, and will then put his pen to a signature, not on a veto, a signature to bring this final bill to law.

Mr. President, it has been, always, a pleasure to work with my chairman, Senator JOHNSTON. I always feel much more comfortable being in harness and on the same side of every issue. And there are very few issues that we are not on the same side, such as the super collider.

I have been less enthusiastic about that than I was about the underground

testing. But nevertheless it was a pleasure to work with Senator JOHNSON on that issue, and many others. And again I emphasize, the difference that we had on this issue of underground testing was not in the ultimate goals to be achieved, of an international, comprehensive test ban treaty and a peaceful world. He shares those with as much enthusiasm as I do. It was methodology; it was procedure. How do we get from here to that point. And, as I say, I think he made a fine contribution even with those differences we may have had.

I think if one person helped put this really on track, it was when the Senator from Nebraska [Mr. EXON], as a subcommittee chairman of the Armed Services Committee, was able to put together, again, a broader perspective, a broader proposal than the one that was originally introduced within 54 Senators cosponsoring, by incorporating the safety factors and the safety tests and the restrictions on them for safety, and by adding the ultimate solution for world peace, which is a test ban treaty or all the nations to join.

He carried the prestige of the authorizing committee. He carried the prestige of the subcommittee chairman who deals with these highly sophisticated weapons systems. He has been out at the desert in Nevada. He has that intimate knowledge, hands-on knowledge.

Then, of course, the prestige of the majority leader of the Senate, Mr. MITCHELL, who, too, has had this great cause to carry, of world peace—devoted, dedicated as he is to those objectives of world peace.

I must say it has been a great experience. It has been a great pleasure as well as an honor to serve in that kind of a coalition with these colleagues and colleagues throughout the Senate on both sides of the aisle.

We had a good, solid Republican vote represented on our side. The majority party, of course, providing even more votes to make it a reality. It was bipartisan. And I think that really proves, again, we can resolve great issues and problems in this Senate through bipartisan effort. This is a historic night. We have all helped write the history of tonight and I hope the President joins in as a partner in this history-making event.

MINIMUM DREDGE FLEET

Mr. HATFIELD. Mr. President, I wish to clarify a matter concerning the Corps of Engineers minimum dredge fleet, and the amount of dredge material to be made available to the private dredging companies for competitive bidding as provided in the conference report to the fiscal year 1993 Energy and Water Development appropriations bill, H.R. 5373. As the Chairman and I know, this issue was the subject of considerable discussion between our staffs prior to the conference, and was a subject of negotiation between us at the conference. I want to ensure that the corps understands what the conferees did.

At our conference, we agreed on a compromise amount of 7,500,000 cubic yards in new work to be made available for competitive bidding in fiscal year 1993. The final statutory language in section 106, included in amendment No. 22, however, uses the term "at least 7,500,000 cubic yards" in describing the compromise amount.

I am concerned that someone in the corps may try to argue that the 7,500,000 cubic yards is the floor and not the target. Someone in the corps might argue that we expect the corps to move up from that amount, not up to that amount.

As a result, I wish to ensure that the legislative history sends as clear a message as possible that the conferees agreed that the target was 7,500,000 cubic yards, and that the term "at least" does not imply a floor to be exceeded. Is this correct?

Mr. JOHNSTON. My colleague from Oregon is correct. We reached a good faith compromise allowing competitive bidding on an additional 7,500,000 cubic yards of hopper dredge work in fiscal year 1993. I join him in emphasizing to the corps that it is a target, not a floor. Of course, they may not be able to hit this precise amount exactly, and our language allows the corps to exceed it by some very small amount.

Mr. HATFIELD. I agree that we need to provide some leeway to the corps to execute their dredging contracts. I understand that calculation of the contracts for competitively bidding the contracts may require a small amount above 7,500,000 cubic yards.

We must stress, however, that Congress agreed to a target of 7,500,000 cubic yards. While I do not ascribe motives to anyone, I want to make it clear that the corps cannot first put out for competitive bid 7,400,000 cubic yards, and then put out for competitive bid another huge contract that results in far exceeding our target total of 7,500,000 cubic yards. While I agree that this is farfetched, it is better to clarify matters now.

Mr. JOHNSTON. I agree.

Mr. HATFIELD. I thank the distinguished Senator from Louisiana.

SNAKE RIVER DRAWDOWN TEST—MARCH 1992

Mr. HATFIELD. As the chairman of the Energy and Water Development Subcommittee knows, there are several items in the conference report to H.R. 5373 which will be beneficial to our efforts in the Pacific Northwest to address many of the problems associated with the threatened and endangered salmon runs in the Columbia River Basin. In particular, one important provision included in amendment No. 9 provides $2,000,000 to compensate for public and private property damages resulting from the Corps of Engineers' March 1992 drawdown test at the Little Goose and Lower Granite projects on the Snake River. The provision authorizes and directs the Chief of Engineers "* * * to pay such sums or undertake such measures as are necessary to compensate for costs of repair, relocation, restoration, or protection of public and private property and facilities * * *" damaged by the drawdown. It is my understanding that the public and private ports and businesses on the Little Goose and Lower Granite projects requested that their facilities be monitored by the Army Corps of Engineers before, during, and after the March 1992 drawdown test. It is also my understanding that the corps encouraged the facility operators to expend private funds to monitor their facilities during and after the test, because they knew that the structural integrity of many of the structures was at risk and that damage might and, inevitably did, occur in several cases.

Would the chairman agree that the reference to "protection" in the statutory language as it relates to the drawdown includes this type of monitoring expense?

Mr. JOHNSTON. Yes, it is reasonable to consider that these types of monitoring activities constitute protection of the property and should be covered under the provisions of amendment No. 9.

Mr. HATFIELD. I thank the distinguished chairman of the subcommittee.

Mr. JOHNSTON. Mr. President, I see the distinguished Senator from Nebraska on the floor. I would also like to join in the accolades and commendations of him. Because as the Senator from Oregon correctly pointed out, he, as the subcommittee chairman with jurisdiction over this matter, was really the key to make it happen. I think the amendment would not have passed but for his strong support of the amendment of the Senator from Oregon and the Senator from Maine [Mr. MITCHELL].

Or should I say their support of Senator EXON's? Or their joint—triumvirate support of this amendment. I think he shares in the glory of this moment as well.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. EXON].

Mr. EXON. Mr. President, I am the only Member of the Senate not a member of the committee of jurisdiction who is here now. But I want to salute these two great leaders, whom I did not know personally when I was Governor of Nebraska. But I knew of BENNETT JOHNSTON from Louisiana, and I knew of MARK HATFIELD from the State of Oregon. It has been a great pleasure to serve with them, now my 14th year in the U.S. Senate.

There should be no question but what the water and energy bill that these two leaders fashioned has been one of

the most difficult things to put together for a long, long time. I am somewhat like my friend and colleague from Oregon. I do not have the same enthusiasm for the superconducting super collider as do other Members of the Senate. Nevertheless we are learning here all the time that because of the collective wisdom of this body—regardless of the partisanship that enters in from time to time, as proven once again with this bill tonight—we are not in as much gridlock on many of the important issues of the day as some would want to believe.

Certainly, I think when we look back at this bill that is being passed tonight, because of the efforts of the Senator from Oregon and the Senator from Louisiana, we will see we are beginning, at least, to take a giant step, a stride, toward an energy policy in our country that has been seriously lacking for a long time.

I also want to thank them for all of their help with regard to the nuclear underground test ban controversy that has been with us for some time now.

As little as a half an hour ago, it appeared that, well, once again we were going to fail and not get this done. Once again, we were able to bring it back together. I hope all of the other parts of the bill that are encompassed in this large bill will be favorably looked on in the future, and those two are the ones who did the hard work to put it together. If some people think we live on perks back here, I wish they had the opportunity to see, as I have, the hard work, real hard work of these two fine leaders to make it possible to pass this bill tonight.

With that, I yield the floor.

Mr. HATFIELD. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. HATFIELD. I just would like to add one postscript to what the Senators from Louisiana and Nebraska have stated tonight.

I think there is another factor and another very important partner in this achievement, and that is the people in a lot of organizations across this country. I will just name one because that one has a very intimate connection to the Senate of the United States, and that is Betty Bumpers and her Peace Links. There are many organizations—Council for a Livable World. It is dangerous to start naming them all, but the people out there who have organized a public opinion and public support deserve a grade deal of credit for this as well.

I thank the Chair.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, and a withdrawal which were referred to the appropriate committees.

(The nominations and a withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:36 p.m., a message from the House of Representatives, announced that the House has passed the bill (S. 1623) to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4016) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of; it agrees to the conference asked by the Senate on the disagreeing votes on the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Energy and Commerce, for consideration of the House bill, and Senate amendments, and modifications committed to conference: Mr. DINGELL, Mr. SWIFT, Mr. ECKART, Mr. SLATTERY, Mr. SIKORSKI, Mr. LENT, Mr. RITTER, and Mr. RINALDO.

As additional conferees from the Committee on Public Works and Transportation, for consideration of the House bill, and Senate amendments, and modifications committed to conference: Mr. ROE, Mr. NOWAK, and Mr. HAMMERSCHMIDT.

As additional conferees from the Committee on Armed Services, for consideration of Senate amendments numbered 1 through 4, and modifications committed to conference: Mr. ASPIN and Mr. RAY.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5006) to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. ASPIN, Mr. BENNETT, Mr. MONTGOMERY, Mr. DELLUMS, Mrs. SCHROEDER, Mrs. BYRON, Mr. MAVROULES, Mr. HUTTO, Mr. SKELTON, Mr. MCCURDY, Mr. FOGLIETTA, Mr. HERTEL, Mrs. LLOYD, Mr. SISISKY, Mr. RAY, Mr. SPRATT, Mr. ORTIZ, Mr. DARDEN, Mr. PICKETT, Mr. LANCASTER, Mr. EVANS, Mr. BILBRAY, Mr. TANNER, Mr. MCNULTY, Mr. BROWDER, Mr. DICKINSON, Mr. SPENCE, Mr. STUMP, Mr. HOPKINS, Mr. DAVIS, Mr. HUNTER, Mr. MARTIN, Mr. KASICH, Mr. BATEMAN, Mr. BLAZ, Mr. IRELAND, Mr. HANSEN, Mr. WELDON, Mr. KYL, Mr. RAVENEL, and Mr. DORNAN of California.

As additional conferees from the Permanent Select Committee on Intelligence, for matters within the jurisdiction of that committee under clause 2 of rule XLVIII: Mrs. KENNELLY, Mr. GLICKMAN, and Mr. SHUSTER.

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 1071, and 4501–02 of the House bill, and sections 838, 1092, 1093, 1094, and 1094B of the Senate amendment, and modifications committed to conference: Mr. CARPER, Mr. LAFALCE, Ms. OAKAR, Mr. VENTO, Mr. KANJORSKI, Mr. RIDGE, Mr. PAXON, and Mr. HANCOCK.

As additional conferees from the Committee on Education and Labor, for consideration of sections 3161–62, 4301–13, 4321–25, 4401, 4404–05, and 4607 of the House bill, and sections 333, 344, 531, 532, 804, 814(e), 1060, 1065, 1082–85, 1099E, 1301–07, and 3151–53 of the Senate amendment, and modifications committed to conference: Mr. FORD of Michigan, Mr. CLAY, Mr. KILDEE, Mr. WILLIAMS, Mr. PERKINS, Mr. GOODLING, Mr. GUNDERSON, and Mrs. ROUKEMA.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 321, 370, 1071, and 3161 of the House bill, and sections 313–17, 319–20, 824, 838, 1205, 2851–55, 2861, 3132, 3135, 3141, 3151–52, and 3201 of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. SWIFT, Mr. SHARP, Mrs. COLLINS of Illinois, Mr. ECKART, Mr. LENT, Mr. RITTER, and Mr. MOORHEAD.

Provided, Mr. DANNEMEYER is appointed in lieu of Mr. MOORHEAD solely for consideration of sections 370 and 3161 of the House bill and section 3152 of the Senate amendment.

Mr. MCMILLAN of North Carolina is appointed in lieu of Mr. MOORHEAD solely for consideration of section 1071 of the House bill and sections 824 and 838 of the Senate amendment.

Mr. SCHAEFER is appointed in lieu of Mr. MOORHEAD solely for consideration of sections 2851–55 of the Senate amendment.

As additional conferees from the Committee on Foreign Affairs, for consideration of sections 146, 175, 204, 233, 234, 241, 304, 324, 365–68, 1031, 1033, 1056, 1057, 1059–60, 1064–65, 1067, 1069–70, 1101–06, 3132, and 3141–45 of the House bill, and sections 112, 223, 304, 361–62, 828, 836, 908, 921–22, 1041, 1043, 1050, 1055, 1057, 1061, 1063, 1066–67, 1071–73, 1075–76, 1091, 1093, 1094A–1094F, 1101–32, 1201–12, and 1401–08 of the Senate amendment, and modifications committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. BERMAN, Mr. BROOMFIELD, Mr. GILMAN, and Mr. LAGOMARSINO.

Provided, that solely for consideration of section 1091 of the Senate amendment, Mr. GEJDENSON is appointed in lieu of Mr. FASCELL, and solely for consideration of sections 1201–12 of the Senate amendment, Mr. TORRICELLI is appointed in lieu of Mr. HAMILTON.

As additional conferees from the Committee on Government Operations, for consideration of sections 313, 374(f), 640, 814, 819, 821, 1002, and 2823 of the House bill, and sections 1003, 1048(f), and 2841 of the Senate amendment, and modifications committed to conference: Mr. CONYERS, Mrs. COLLINS of Illinois, Mr. TOWNS, Mr. THORNTON, Mr. PETERSON of Minnesota, Mr. HORTON, Mr. KYL, and Mr. CLINGER.

As additional conferees from the Committee on the Judiciary, for consideration of section 374 (d) and (f), 531, 819, and 1060(a) of the House bill, and sections 1046, 1047, 1048 (d) and (f), and 3137 of the Senate amendment, and modifications committed to conference: Mr. BROOKS, Mr. FRANK of Massachusetts, Mr. SYNAR, Mr. FISH, and Mr. GEKAS.

As additional conferees from the Committee on the Judiciary, for consideration of sections 838(e) and 1062 of the Senate amendment, and modifications committed to conference: Mr. BROOKS, Mr. EDWARDS of California, Mr. CONYERS, Mr. HYDE, and Mr. COBLE.

As additional conferees from the Committee on the Judiciary, for consideration of section 1068 of the House bill, and modifications committed to conference: Mr. BROOKS, Mr. MAZZOLI, Mr. BERMAN, Mr. MCCOLLUM, and Mr. SMITH of Texas.

As additional conferees from the Committee on the Judiciary, for consideration of section 922 of the Senate amendment, and modifications committed to conference: Mr. BROOKS, Mr. SCHUMER, Mr. HUGHES, Mr. SENSENBRENNER, and Mr. SCHIFF.

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of sections 536, 1013, 1016(b), 1017, 1019, 1021, 2837, and 3501–04 of the House bill, and sections 612(b) 1021–23, 1045, 1053, 1206, 2837, 2851–55, 3103(e), and 3501 of the Senate amendment, and modifications committed to conference: Mr. STUDDS, Mr. HUBBARD, Mr. HUGHES, Mr. TAUZIN, Mr. LIPINSKI, Mr. YOUNG of Alaska, Mr. FIELDS, and Mr. LENT.

As additional conferees from the Committee on Post Office and Civil Service, for consideration of sections 531, 924(a), 1060(a), 1201–06, 1301, 4401, and 4601–06 of the House bill, and sections 341–48, 539, 809(b), 1044–45, 1058(a), 1074, that portion of section 1082 that adds a new section 195H to the National and Community Service Act of 1990, 1099D, and 1306 of the Senate amendment, and modifications committed to conference: Mr. CLAY, Ms. OAKAR, Mr. SIKORSKI, Mr. ACKERMAN, Mr. KANJORSKI, Mr. GILMAN, Mr. HORTON, and Mr. MYERS of Indiana.

As additional conferees from the Committee on Public Works and Transportation, for consideration of sections 4101–06 and 4501–02 of the House bill, and sections 313–17, 320, and 332 of the Senate amendment, and modifications committed to conference: Mr. ROE, Mr. MINETA, Mr. NOWAK, Mr. KOLTER, Mr. HAYES of Louisiana, Mr. HAMMERSCHMIDT, and Mr. SHUSTER.

Provided, that solely for consideration of sections 4101–06 and 4501–02 of the House bill, and section 332 of the Senate amendment, Mrs. BENTLEY is appointed; and solely for consideration of sections 313–17 and 320 of the Senate amendment, Mr. PETRI is appointed.

As additional conferees from the Committee on Science, Space, and Technology, for consideration of sections 241, 4105, 4201–03, and 4206 of the House bill, and sections 204, 801–06, 809, 810A, 837, 839, 1112, 3139, and 3141 of the Senate amendment, and modifications committed to conference: Mr. BROWN, Mr. VALENTINE, Mr. MINETA, Ms. HORN, Mr. BACCHUS, Mr. WALKER, Mr. LEWIS of Florida, and Mr. PACKARD.

As additional conferees from the Committee on Small Business, for consideration of section 4204 of the House bill, and sections 807, 811, 815, and 1032 of the Senate amendment, and modifications committed to conference: Mr. LAFALCE, Mr. SMITH of Iowa, and Mrs. MEYERS of Kansas.

As additional conferees from the Committee on Veterans' Affairs, for consideration of sections 641–42 and 4351–68 of the House bill, and sections 536, 538, 549, and 551 of the Senate amendment, and modifications committed to conference: Mr. PENNY, Mr. APPLEGATE, and Mr. SMITH of New Jersey.

As additional conferees from the Committee on Ways and Means, for consideration of section 4607 of the House bill, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. STARK, Mr. ARCHER, Mr. CRANE, and Mr. VANDER JAGT.

As additional conferees from the Committee on Ways and Means, for consideration of sections 1404–05 of the Senate amendment, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. JENKINS, Mr. DOWNEY, Mr. PEASE, Mr. ARCHER, Mr. CRANE, and Mr. VANDER JAGT.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5334) to amend and extend certain laws relating to housing and community development, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as conferees on the part of the House:

From the Committee on Banking, Finance and Urban Affairs, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. GONZALEZ, Ms. OAKAR, Mr. VENTO, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. WYLIE, Mrs. ROUKEMA, and Mr. BEREUTER.

As additional conferees from the Committee on Education and Labor, for consideration of sections 165 and 912 of the House bill and sections 946, 1011 (a) and (e), 1012 (h)–(j), 1021, and 1023 of the Senate amendment, and modifications committed to conference: Mr. FORD of Michigan, Mr. GAYDOS, and Mr. HENRY.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 1011(g), 1015, 1022, 1031, 1032, and 1056 of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. SWIFT, Mr. WAXMAN, Mr. ECKART, Mr. SIKORSKI, Mr. LENT, Mr. DANNEMEYER, and Mr. RITTER.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 1021 and 1023 of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. SWIFT, and Mr. LENT.

At 1:08 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5428) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1993, and for other purposes; it recedes from its disagreement to the amendment of the Senate numbered 9 to the bill, and agrees thereto; and it recedes from its disagreement to the amendments of the Senate numbered 5, 11, 12, 15, 19, 20, 47, 49, and 50, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

At 4:25 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 1709) to amend the Farm Credit

Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5095) to authorize appropriations for fiscal year 1993 for intelligence and intelligence-related activities of the U.S. Government and the Central Intelligence Agency Retirement and Disability System, to revise and restate the Central Intelligence Agency Retirement Act of 1964 for certain employees, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Permanent Select Committee on Intelligence: Mr. McCURDY, Mr. WILSON, Mrs. KENNELLY, Mr. GLICKMAN, Mr. MAVROULES, Mr. RICHARDSON, Mr. SOLARZ, Mr. DICKS, Mr. DELLUMS, Mr. BONIOR, Mr. SABO, Mr. OWENS of Utah, Mr. SHUSTER, Mr. COMBEST, Mr. BEREUTER, Mr. DORNAN of California, Mr. YOUNG of Florida, Mr. MARTIN, and Mr. GEKAS.

From the Committee on Armed Services, for the consideration of Department of Defense tactical intelligence and related activities: Mr. ASPIN, Mr. SKELTON, and Mr. DICKINSON.

The message further announced that the Speaker makes the following modification in the appointment of House conferees in the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5006) entitled "An act to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes":

As a replacement conferee from the Committee on Government Operations, Mr. SYNAR is appointed in lieu of Mrs. COLLINS of Illinois.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2344) to improve the provision of health care and other services to veterans by the Department of Veterans Affairs, and for other purposes.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5504) making appropriations for the Department of Defense for the fiscal year ending September 30, 1993, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. MURTHA, Mr. DICKS, Mr. WILSON of Texas, Mr. HEFNER, Mr. AUCOIN, Mr. SABO, Mr. DIXON, Mr. DWYER of New Jersey, Mr. WHITTEN, Mr. McDADE, Mr. YOUNG of Florida, Mr. MILLER of Ohio, Mr. LIVINGSTON, and Mr. LEWIS of California as managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2890. An act to amend title XIX of the Social Security Act to establish limits on the prices of prescription drugs procured by the Department of Veterans Affairs or purchased by certain clinics and hospitals, and for other purposes;

H.R. 4014. An act to improve education in the United States by promoting excellence in research, development, and the dissemination of information;

H.R. 4841. An act granting the consent of Congress to the New Hampshire-Maine Interstate School Compact;

H.R. 5557. An act to amend the Magnuson Fishery Conservation and Management Act to provide for the restoration of New England stocks of groundfish, and for other purposes; and

H.R. 5952. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize prescription drug application, establishment, and product fees, and for other purposes.

At 9:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5373) making appropriations for energy and water development for the fiscal year ending September 30, 1993, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 3, 4, 8, 10, 11, 21, 34, 36, and 48 to the bill, and agrees thereto; and that it recedes from its disagreement to the amendments of the Senate numbered 2, 6, 7, 9, 17, 18, 19, 22, 27, 31, 35, 37, 39, 43, 44, 45, 46, 47, 57, and 58, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5517) making appropriations for the Government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1993, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 14, 26, 27, and 28 to the bill, and agrees thereto; and that it recedes from its disagreement to the amendments of the Senate numbered 4, 5, 7, 10, 15, 16, 17, 18, 19, 23, and 24 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5452. An act granting the consent of Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4841. An act granting the consent of the Congress to the New Hampshire-Maine Interstate School Compact; to the Committee on the Judiciary.

H.R. 5452. An act granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5851. An act to establish the Commission on Information Technology and Paperwork Reduction.

H.R. 5557. An act to amend the Magnuson Fishery Conservation and Management Act to provide for the restoration of New England stocks of groundfish, and for other purposes.

H.R. 5952. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize prescription drug application, establishment, and product fees, and for other purposes.

ENROLLED BILLS SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that on today, September 24, 1992, he had signed the following enrolled bills previously signed by the Speaker of the House:

S. 1731. An act to set forth the policy of the United States with respect to Hong Kong, and for other purposes; and

S. 3175. An act to improve the administrative provisions and make technical corrections in the National and Community Service Act of 1990.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3937. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, notice of a proposal to obligate funds under the "Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of fiscal year 1992"; to the Committee on Armed Services.

EC-3938. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, notice of a proposed use of funds under the fiscal year 1992 NASA Authorization Act; to the Committee on Commerce, Science and Transportation.

EC-3939. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, a draft of proposed legislation to clarify the responsibilities of electronic communication service (ECS) providers and private branch exchange (PBX) operators to assist the government to implement lawful court orders or authorizations to intercept wire and electronic communications; to the Committee on Commerce, Science and Transportation.

EC-3940. A communication from the Administrator of the United States Agency for International Development, transmitting, a draft of proposed legislation to amend the Foreign Service Act of 1980; to the Committee on Foreign Relations.

EC-3941. A communication from the Chairman of the Commission on Minority Business Development, transmitting, pursuant to law, a report entitled "Final Report of the U.S. Commission on Minority Business Development"; to the Committee on Small Business.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-474. A resolution adopted by the Catholic War Veterans of the United States relative to the Junior Reserve Officers Training Corps; to the Committee on Armed Services.

POM-475. A resolution adopted by the Catholic War Veterans of the United States opposing the acceptance of homosexuals in the United States military; to the Committee on Armed Services.

POM-476. A resolution adopted by the Catholic War Veterans of the United States favoring legislation to allow a military retiree to receive longevity retired pay concurrently with compensation from the Veterans Administration for a service-connected disability; to the Committee on Armed Services.

POM-477. A resolution adopted by the American Library Association favoring the reauthorization of the Corporation for public broadcasting; to the Committee on Commerce, Science, and Transportation.

POM-478. A resolution adopted by the Organization of American Historians relative to access to the historical records of the Department of Energy; to the Committee on Energy and Natural Resources.

POM-479. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works.

"ASSEMBLY JOINT RESOLUTION NO. 69

"Whereas, The State Water Resources Control Board adopted the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan on April 11, 1991; and

"Whereas, The state board performed comprehensive technical analyses and conducted an extensive public review process prior to adoption of the plans; and

"Whereas, The plans address a wide range of water quality issues and represent a statewide approach to compliance with Section 303(c)(2)(B) of the Clean Water Act; and

"Whereas, According to its own regulations, the Environmental Protection Agency (EPA) had 90 days in which to notify the state that it was disapproving the plans; and

"Whereas, On November 5, 1991, EPA issued a national toxics rule imposing uniform national standards on states without an approved plan; and

"Whereas, EPA Region IX did not act on the California plans until 210 days had passed and did not issue its letter of partial disapproval until the day that EPA proposed its national toxics rule; and

"Whereas, Despite the comprehensive and sweeping impact of both the proposed federal rule and the Region IX action, EPA allowed only 30 days for public comment and refused to consider California's unique circumstances; and

"Whereas, The national toxics rule as proposed by EPA usurps state authority to establish site-specific standards, the effect of which will be to delay implementation of future standards more appropriate to California due to the length and complexity of the federal promulgation process; and

"Whereas, The practical attainability of the standards promulgated by EPA is dubious, yet the cost to Californians of implementing the criteria is enormous; and

"Whereas, The state plans recognized the unique aspects of certain water bodies, which are not naturally perennial and support aquatic habitat uses during the dry season as a result of the discharge of reclaimed water, by allowing six years to develop objectives based upon the site-specific characteristics of each water body; and

"Whereas, EPA proposes to disallow this time schedule and require immediate imposition of numeric objectives without regard to their appropriateness, attainability, or actual impact on water quality; and

"Whereas, EPA proposes to regulate reclaimed water used for landscape irrigation and groundwater recharge more stringently than drinking water, without regard to the need for the recycling of water in the state; and

"Whereas, California has followed a reasonable approach in developing standards protective of water quality, and EPA's justification for disapproval of those standards violates the spirit and letter of the Clean Water Act, which recognizes the primacy of states in water pollution control; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California requests the Environmental Protection Agency to recognize that the State of California needs, because of its unique circumstances, to encourage the production and use of reclaimed water, and further requests the Environmental Protection Agency to approve those portions of the California Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan relating to Category A water bodies (natural water bodies that support, or are planned to support within six years of plan adoption, aquatic habitat beneficial uses as a result of reclaimed water discharges); and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the Administrator of the Environmental Protection Agency, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-480. A resolution adopted by the Catholic War Veterans of the United States opposing normalization of relations with Vietnam until a full accounting of Americans missing in action or prisoners of war in Southeast Asia is made; to the Committee on Foreign Relations.

POM-481. A petition from a citizen of Woodbury, Connecticut favoring a constitutional amendment relative to term limits for members of Congress; to the Committee on the Judiciary.

POM-482. A concurrent resolution adopted by the Legislature of the State of Missouri; to the Committee on the Judiciary.

"SENATE COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTIONS NOS. 14, AND 16

"Whereas, the First Congress of the United States of America, at its first session, sitting in New York, New York, on September 25, 1789, in both Houses, by a Constitutional majority of two-thirds thereof, has proposed an amendment to the Constitution of the United States of America in the following words, to wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following [Article] be proposed to the Legislature of the several states, as [an Amendment] to the Constitution of the United States, * * * which [Article], was ratified by three-fourths of said Legislatures, to be valid to all intents and purposes as part of the said Constitution, viz;

"'[An article] in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several states, pursuant to the fifth Article of the original Constitution.

"'Article the second * * *. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

"Whereas, article V of the United States Constitution allows the General Assembly of the State of Missouri to ratify this proposed amendment to the Constitution of the United States; and

"Whereas, the proposed amendment to the Constitution of the United States has already been ratified by the Legislatures of the following states in the years indicated, to wit: Maryland in 1789; North Carolina in 1789; South Carolina in 1790; Delaware in 1790; Vermont in 1791; Virginia in 1791; Ohio in 1873; Wyoming in 1978; Maine in 1983; Colorado in 1984; South Dakota in 1985; New Hampshire in 1985; Arizona in 1985; Tennessee in 1985; Oklahoma in 1985; New Mexico in 1986; Indiana in 1986; Utah in 1986; Arkansas in 1987; Montana in 1987; Connecticut in 1987; Wisconsin in 1987; Georgia in 1988; West Virginia in 1988; Louisiana in 1988; Iowa in 1989; Idaho in 1989; Nevada in 1989; Alaska in 1989; Oregon in 1989; Minnesota in 1989; Texas in 1989; Kansas in 1990; Florida in 1990; and North Dakota in 1991; and

"Whereas, Article V of the United States Constitution does not state a time limit on ratification of an amendment submitted by the Congress, and the First Congress specifically did not establish a deadline for the ratification of this particular proposed amendment; and

"Whereas, the United States Supreme Court has ruled in the case of Coleman v. Miller, 307 US 433 (1939), that a proposed amendment to the United States Constitution, submitted without any deadline, may be ratified by states at any time and Congress must then determine whether a reasonable amount of time has elapsed since its ini-

tial submission when—in the presence of certified ratifications from the requisite number of states—the time arrives for the promulgation of the adoption of the amendment; and

"Whereas, the General Assembly of the State of Missouri finds that the proposed amendment is still meaningful and needed as part of the United States Constitution and that the present political, social and economic conditions are the same as or are even more demanding today than they were when the proposed amendment was first submitted for its adoption: Now, therefore, be it

"*Resolved by the Missouri Senate, the House of Representatives concurring therein*, That the proposed amendment to the Constitution of the United States as aforequoted be and the same hereby is ratified by the Eighty-sixth General Assembly of the State of Missouri; and be it further

"*Resolved*, That the Secretary of the Missouri Senate be instructed to send a certified copy of this resolution to the Archivist of the United States, Washington, D.C.; the Vice President of the United States; the Speaker of the United States House of Representatives; and to each member of the United States Congress from Missouri with the request that it be printed in full in the Congressional Record."

POM-483. A resolution adopted by the Catholic War Veterans of the United States favoring the adoption of S. 2372 relative to the compensation of certain veterans; to the Committee on Veterans' Affairs.

POM-484. A resolution adopted by the Catholic War Veterans of the United States favoring the adoption of legislation relative to veterans preference in hiring; to the Committee on Veterans' Affairs.

POM-485. A resolution adopted by the Catholic War Veterans of the United States favoring the designation of May of each year as "National CWV and CWVA Hospital Month; to the Committee on Veterans' Affairs.

POM-486. A resolution adopted by the Catholic War Veterans of the United States favoring the adoption of a VA cost-of-living allowance; to the Committee on Veterans' Affairs.

POM-487. A resolution adopted by the Catholic War Veterans of the United States favoring the adoption of legislation to provide a burial allowance; to the Committee on Veterans' Affairs.

POM-488. A resolution adopted by the Catholic War Veterans of the United States favoring the adequate funding for VA health care; to the Committee on Veterans' Affairs.

POM-489. A resolution adopted by the Catholic War Veterans of the United States relative to Secretary Derwinski's initiative regarding the taxability of certain veterans benefits; ordered to lie on the table.

POM-490. A resolution adopted by the Catholic War Veterans of the United States urging clergy to initiate programs focusing on the lives of the saints; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1993 (Rept. No. 102-421).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

H.R. 1297. A bill to amend the Dingell-Johnson Sport Fish Restoration Act to authorize the use by coastal States of apportionments under that Act for construction, renovation, and maintenance of shoreside pumpout stations for marine sanitation devices (Rept. No. 102-422).

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 2041. A bill to amend the Petroleum Marketing Practices Act to enhance competition, and for other purposes (Rept. No. 102-423).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 1096. A bill to authorize appropriations for programs, functions, and activities of the Bureau of Land Management for fiscal years 1992, 1993, 1994, and 1995; to improve the management of the public lands; and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 1592. A bill to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2109. A bill to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, Massachusetts, in the National Park System.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 2141. A bill to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2181. A bill to permit the Secretary of the Interior to acquire by exchange lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 2321. A bill to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 2444. A bill to revise the boundaries of the George Washington Birthplace National Monument.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 2502. A bill to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2859. A bill to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, Massachusetts, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 3011. A bill to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 3457. A bill to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the national wild and scenic rivers system.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 3638. A bill making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 3665. A bill to establish the Little River Canyon National Preserve in the State of Alabama.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 4276. A bill to amend the Historic Sites, Buildings, and Antiquities Act to place certain limits on appropriations for projects not specifically authorized by law, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 4999. A bill to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House.

H.J.Res. 271. A joint resolution authorizing the Go for Broke National Veterans Association to establish a memorial to Japanese American Veterans in the District of Columbia or its environs.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1664. A bill to establish the Keweenaw National Historical Park, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 1879. A bill to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1925. A bill to remove a restriction from a parcel of land owned by the City of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1990. A bill to authorize the transfer of certain facilities and lands in the Wenatchee National Forest, Washington.

S. 2021. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a component of the National Wild and Scenic Rivers System, and for other purposes.

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By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 2045. A bill to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2244. A bill to require the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate United States participation in that conflict.

S. 2353. A bill to provide for a land exchange with the city of Tacoma, Washington.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 2397. A bill to expand the boundaries of Yucca House National Monument in Colorado, to authorize the acquisition of certain lands within the boundaries, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2544. A bill to establish in the Department of the Interior the Colonial New Mexico Preservation Commission, and for other purposes.

S. 2549. A bill to establish the Hudson River Artists National Historical Park in the State of New York, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2577. A bill to provide for the exchange of certain federal lands within the State of Utah, between the State of Utah and the Secretary of the Interior.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 2749. A bill to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 2890. A bill to provide for the establishment of the Civil Rights in Education: Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes.

S. 3100. A bill to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, Louisiana, and for other purposes.

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 3134. A bill to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided by Head Start programs, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 3217. A bill to amend the Wild and Scenic Rivers Act to designate segments of the Great Egg Harbor and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, and for other purposes.

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. McCAIN:

S. 3267. A bill to provide Indian education assistance to carry out the purposes of title IV of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696, to provide for reimbursement to the Treasury by certain private parties, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. WIRTH:

S. 3268. A bill to establish the Office of Law Enforcement in the United States Fish and Wildlife Service; to the Committee on Environment and Public Works.

By Mr. McCONNELL:

S. 3269. A bill to prohibit the export of American black bear viscera, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PRYOR (for himself, Mr. SASSER, Mr. COHEN, Mr. GRASSLEY, Mr. CONRAD, Mr. LEAHY, Mr. DURENBERGER, Mr. MITCHELL, Mr. HOLLINGS, Mr. BUMPERS, Mr. McCAIN, and Mr. SANFORD):

S. 3270. A bill to amend title XVIII of the Social Security Act to provide for improved standards to prevent fraud and abuse in the purchasing and rental of durable medical equipment and supplies, and prosthetics and orthotics, and prosthetic devices under the medicare program, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COATS:

S. Res. 346. Resolution to express the sense of the Senate regarding the capture on September 12, 1992, of the Peruvian communist and terrorist leader, Abimael Guzman, and for other purposes; to the Committee on Foreign Relations.

By Mr. JOHNSTON (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 347. Resolution to authorize document production in United States v. Charles H. Keating, Jr., et al.; considered and agreed to.

S. Res. 348. Resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCAIN:

S. 3267. A bill to provide Indian education assistance to carry out the purposes of title IV of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696, to provide for reimbursement to the Treasury by certain private parties, and for other purposes; to the Select Committee on Indian Affairs.

INDIAN EDUCATION ASSISTANCE

Mr. McCAIN. Mr. President, Public Law 100-696 authorized the exchange of federally owned property, known as the Indian School, located in downtown Phoenix for 108,000 acres of privately owned wetlands in Florida, and other vital considerations.

Upon the exchange of title to the lands, the receiver of the Indian School Property, the Baron Collier Co., is required by law to begin payment of a $34.9 million Indian Education Trust Fund. The fund is intended to compensate native Americans in Arizona for the closure of the school located on the property which had served native Americans for many years.

The implementing legislation requires the Department of the Interior to fully secure the trust fund payments. Recently, the Department of the Interior and Collier agreed to achieve that goal by delaying the transfer of title and the commencement of payments for up to 4 years. It appears that the parties will soon sign a binding agreement to proceed with the exchange, while allowing the delay in title transfer.

I had certainly hoped and anticipated that the Secretary and Collier would be able to secure the trust fund moneys in a manner which would provide for the timely exchange of lands and for trust fund payments to begin immediately. I have urged the Secretary to explore ways to consummate the exchange of title and ensure the commencement of secured payments to the trust fund as soon as legally possible.

Despite my reservations, the good news is that the agreement in principal, including a potential delay in title transfer, will enable the transaction to move forward, thereby preserving the benefits of the exchange for all parties, including native Americans.

But the good news is not good enough. I believe it is incumbent upon Congress and the Federal Government, as trustees, to do everything we can to ensure that the education account is fully funded without delay. Accordingly, today I'm introducing legislation to authorize the Congress to appropriate the full $34.9 million for Indian education purposes.

Under this legislation if Congress appropriates the full $34.9 million, Baron Collier Co. would be required to reimburse the Federal Treasury under the same terms, and utilizing the same security, as the company would otherwise be required to pay directly into the trust fund.

Should Congress appropriate only a portion of the $34.9 million, Collier would be required to pay the balance of the principal plus interest to the trust fund, and reimburse the Treasury for the amount appropriated by Congress plus interest.

Under this scenario, payments by Collier to the trust fund and the Treas-

ury would be made under identical terms—those established by the Secretary of the Interior. The underlying premise is that if the trust fund payment agreement negotiated by the Secretary of the Interior is good enough for Arizona's native Americans, it's good enough for the United States.

Collier is provided no debt relief by this bill. It's our intent, and the effect of this bill, that the company be required to pay the same amount under this legislation as it would under the terms of existing law. Furthermore, the bill includes a provision requiring the InterTribal Council of Arizona and the Navajo Tribe to consent before any alternative form of payment authorized by this bill is implemented in lieu of the form established by the Secretary of the Interior under existing law. This will ensure that native Americans have the final say in the matter.

This legislation seeks to ensure that the native Americans are taken care of first. Well we should. The Federal Government has a trust responsibility to native Americans. Capitalizing the trust fund without delay will help us meet that responsibility by ensuring that Arizona's native Americans do not have to wait for the educational opportunities they need and deserve.

Mr. President, there is another vital element to the Indian School transaction. Under the law, parcels of the Phoenix Indian School property are to be transferred to the Department of Veterans Affairs and the State of Arizona for the construction of veterans' health care facilities, and to the city of Phoenix for parkland.

I am hopeful and encouraged that upon the execution of a binding agreement between the Department and Colliers to consummate the exchange, the Secretary will have the authority to grant special permits to the city of Phoenix, the State of Arizona, and the Department of Veterans Affairs for use of the parcels they are to receive under the law, until the official transfer of title. The Department of Defense appropriations bill includes language affirming the administration's authority to provide such permits. This will ensure that the city and our veterans are held harmless by any delay in the transfer of title.

It seems to me that at such time as the Secretary of the Interior and the city of Phoenix bind themselves to proceed with the exchange, the Secretary should have the authority to convey title to the parcels which the city, the Department of Veterans Affairs, and the State of Arizona are to receive. The bill I'm introducing would clarify the Secretary's authority to make such conveyances.

Consummation of the Indian School land exchange, even if the transfer of title to the exchanged lands is delayed, will provide many benefits. Passage of this bill will ensure that we put our very best foot forward on behalf of native Americans, veterans, and the citizens of Phoenix.

Mr. President, the land exchange and the trust fund agreement are very complex issues. I look forward to receiving input and comments on the legislation to ensure that our good intentions are appropriately fulfilled.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 3267

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDIAN EDUCATION ASSISTANCE TRUST FUNDS

(a) ESTABLISHMENT.—

(1) ARIZONA FUND.—

(A) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the Interim Arizona InterTribal Education Assistance Trust Fund subject to the same conditions as described for the Arizona InterTribal Trust Fund in subsections (c) and (d) of section 405 of the Arizona-Idaho Conservation Act of 1988, P.L. 100-696 (hereinafter "the Act").

(B) AMOUNTS IN FUND.—The fund established in subparagraph (A) shall consist of such amounts as are appropriated and allocated to the fund pursuant to subsection (b).

(2) NAVAJO FUND.—

(A) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the Interim Navajo Education Assistance Trust Fund subject to the same conditions as described of the Navajo Trust Fund in subsections (c) and (d) of section 405 of the Act.

(B) AMOUNTS IN FUND.—The fund established in subparagraph (A) shall consist of such amounts as are appropriated and allocated to the fund pursuant to subsection (b).

(b) AUTHORIZAITON OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated an aggregate of $34,900,000 to the funds established in subsection (a) to be allocated in accordance with paragraph (2).

(2) ALLOCATION.—

(A) ARIZONA FUND.—Sums appropriated pursuant to paragraph (1) shall be allocated to the fund established in subsection (a)(1) in the same manner as sums are allocated to the Arizona InterTribal Trust Fund pursuant to section 405 of the Act.

(B) NAVAJO FUND.—Sums appropriated pursuant to paragraph (1) shall be allocated to the fund established in subsection (a)(2) in the same manner as sums are allocated to the Navajo Trust Fund pursuant to Section 405 of such Act.

(c) REIMBURSEMENT.—

(1) IN GENERAL.—

(A) FULL APPROPRIATION.—Notwithstanding Title IV of such Act, if the full amount specified in subsection (b)(1) is appropriated and allocated in accordance with subsection (b) prior to the date on which the first annual payment is required to be made by Collier to the Arizona InterTribal Trust Fund and the Navajo Trust Fund under title IV of such Act, and the Trust Fund payment Agreement required under Section 403 of such Act, the Secretary of the Interior shall direct Collier to pay to the Secretary of the Treasury any amounts otherwise due and payable to the United States under the Trust Fund Payment Agreement, in lieu of and in full satisfaction of payment to the United States by Collier for deposit into the Arizona InterTribal Trust Fund and the Navajo Trust Fund pursuant to title IV of such Act and such Trust Fund Payment Agreement.

(B) PARTIAL APPROPRIATION.—Notwithstanding title IV of such Act, if less than the amount specified in subsection (b)(1) is appropriated and allocated in accordance with subsection (b) prior to the date described in subparagraph (A), at such time as Collier is required to make any annual payment or payment of principal under the Trust Fund Payment Agreement described under subparagraph (A), the Secretary of the Interior shall direct Collier to pay, in full satisfaction and in lieu of such payment: (i) to the Secretary of the Treasury for deposit into the general fund of the Treasury, an amount which bears the same proportion to the total amount of such payment as the total of the sums appropriated pursuant to subsection (b) bear to $34.9 million, and (ii) to the Secretary of the Interior for deposit into the Arizona InterTribal Trust Fund and Navajo Trust Fund, in accordance with subsection 405 of the Act, the remainder of each such payment.

(2) DEFINITION.—As used in this subsection, the term "Collier" has the meaning provided under section 401(5) of such Act.

(d) TERMINATION.—

(1) IN GENERAL.—The funds established in subsection (a) shall terminate on the date of the first Collier payment described in subsection (c)(1)(A).

(2) TRANSFER OF REMAINING SUMS.—Upon termination under paragraph (1)—

(A) the Secretary of the Treasury shall transfer any sums remaining in the fund established in subsection (a)(1) to the Arizona InterTribal Trust Fund established under section 405(a) of such Act; and

(B) the Secretary of the Treasury shall transfer any sums remaining in the fund established in subsection (a)(2) to the Navajo Trust Fund established under section 405(a) of such Act.

(e) No funds appropriated under this Act shall be available to the InterTribal Council of Arizona (ITCA) and Navajo Tribe (as defined in Section 401 of the Act) or be deposited into the Interim Trust Funds established by section 1 of this Act unless the ITCA and Navajo Tribe provide written consent to the method of payment established in this Act in lieu of the method of payment provided in the Act and the Trust Fund Payment Agreement authorized by the Act.

SEC. 2. TRANSFER OF TITLE TO INDIAN SCHOOL LANDS

(a) Notwithstanding the provisions of any other law, subject to the execution of a finding Trust Fund Payment Agreement as required by Section 403 of the Act, and notwithstanding the absence of the closing of the Land Exchange, the Secretary of the Interior is authorized to transfer to the Department of Veterans Affairs jurisdiction and control of the parcels of property described in Section 402 (f) and (g) of the Act. The Secretary of Veterans Affairs is authorized to accept such transfer of jurisdiction and to convey to the State of Arizona the parcel of property described in Section 402(g) of the Act under the conditions and for the purposes described therein. No transfer or conveyance of property or other action by the Secretary of the Interior prior to the conveyance to Collier of the Phoenix Exchange Property (as defined in Section 401 of the Act) shall be deemed to constitute a closing of the Land exchange under the Act.

(b) Notwithstanding the provisions of any other law, subject to the execution of a bind-

ing Trust Fund Payment Agreement as required by Section 403 of the Act, the Secretary of the Interior is authorized to convey to the City of Phoenix, Arizona, the parcel of property described in Section 402(e) of the Act under the conditions and for the purposes described therein. No transfer or conveyance of property or other action by the Secretary of the Interior prior to the conveyance to Collier of the Phoenix Exchange Property (as defined in Section 401 of the Act) shall be deemed to constitute a closing of the Land Exchange under the Act.

By Mr. WIRTH:

S. 3268. A bill to establish the Office of Law Enforcement in the U.S. Fish and Wildlife Service; to the Committee on Environment and Public Works.

UNITED STATES FISH AND WILDLIFE SERVICE LAW ENFORCEMENT CLARIFICATION AND ENHANCEMENT ACT

• Mr. WIRTH. Mr. President, today I am introducing legislation to improve the ability of the U.S. Fish and Wildlife Service to protect this Nation's wildlife resources. As wildlife habitat around the world shrinks, and human pressures on wildlife populations increase, poaching is becoming an evermore profitable venture. This situation is having dramatic effects on wildlife across the country.

Today, poaching is estimated to be a $2 billion industry worldwide, with profits large enough to attract organized crime. Poaching activities range from the illegal taking of black and brown bear for their gall bladders—prized in much of Asia—to the wholescale destruction of walrus and elephants for their ivory and the trapping of tropical birds, reptiles and other endangered species for the exotic pet trade in the United States and Europe.

Illegal hunting is one of the key reasons the populations of many waterfowl have decreased by more that 40 percent since the second world war. Other species—such as black bear—are not endangered, but poaching is such a serious problem that our wildlife managers cannot set accurate hunting seasons as they don't know what an acceptable harvest might be.

This situation must be addressed. My bill, the U.S. Fish and Wildlife Service Law Enforcement Clarification and Enhancement Act, would elevate the Law Enforcement Division of the USFWS to a directorate level, resulting in improved communication, coordination, consistency, and oversight of the law enforcement program. 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. 3268

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 "United States Fish and Wildlife Service Law Enforcement Clarification and Enhancement Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The law enforcement responsibilities of the United States Fish and Wildlife Service have evolved far beyond the realm of ensuring compliance with hunting and fishing regulations. Increasing visitor utilization and urbanization of refuges bring with them associated problems of crime. The expansion of international treaties and attendant responsibilities have increased tremendously in recent years. The illegal trade in wildlife products is becoming increasingly well organized and commercial and is often associated with other criminal activities such as narcotics, money laundering, weapons dealing, and tax fraud.

(2) The concerns and needs of the United States Fish and Wildlife Service Law Enforcement Division are not adequately represented at the directorate level and the degree of agency support for law enforcement is at the discretion of the Director and, therefore, is inconsistent over time.

(3) Partly as a result of the lack of directorate level representation for law enforcement, the Law Enforcement Division is grossly understaffed and underfunded. Three decades of documentation clearly show that this is a chronic problem. The division is unable to adequately enforce the wildlife protection laws mandated by the Congress and as a result—

(A) wildlife populations are in danger;

(B) the legal and illegal trade in wildlife products is increasing; the percentage of shipments inspected is decreasing; and

(C) the percentage of shipments inspected that are in violation of wildlife protection laws is increasing.

(4) Although the law enforcement program of the United States Fish and Wildlife Service should not be any more important than other Service programs, law enforcement is fundamentally different than the other programs and would be better integrated into the overall mission of the Service if it operated at the directorate level.

(5) A directorate level status for the United States Fish and Wildlife Service Law Enforcement Division is necessary in order to improve communication, coordination, consistency, control, and oversight of law enforcement activities of the Fish and Wildlife Service.

SEC. 3. LAW ENFORCEMENT FUNCTIONS OF UNITED STATES FISH AND WILDLIFE SERVICE.

The Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) is amended by adding at the end the following:

"SEC. 15. DIVISION OF LAW ENFORCEMENT.

"(a) ESTABLISHMENT.—The Division of Law Enforcement is hereby established in the office of the Director of the United States Fish and Wildlife Service.

"(b) ASSISTANT DIRECTOR FOR LAW ENFORCEMENT.—

"(1) IN GENERAL.—The Assistant Director for Law Enforcement shall be the head of the Division of Law Enforcement, and shall be appointed by the President from among individuals who have wildlife law enforcement experience.

"(2) CAREER RESERVED POSITION.—The Assistant Director for Law Enforcement shall be a career reserved position (in the Senior Executive Service) within the meaning of that term under section 3132(8) of title 5, United States Code.

"(3) LOCATION.—The office of the Assistant Director for Law Enforcement shall be located in the District of Columbia.

"(c) FUNCTIONS.—The Assistant Director for Law Enforcement shall administer the law enforcement functions of the United States Fish and Wildlife Service.".•

By Mr. MCCONNELL:

S. 3269. A bill to prohibit the export of American black bear viscera, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

BLACK BEAR PROTECTION ACT OF 1992

• Mr. MCCONNELL. Mr. President, I rise today to introduce legislation that protects one of our continent's most awe inspiring creatures, the black bear.

The American black bear's habitat is limited to the mountains of the United States and Canada, but it does not qualify for protection under the Endangered Species Act. Recent trends suggest that recovering bear populations may be seriously threatened if preventive measures are not taken soon.

Four hundred thousand blacks bears are estimated to inhabit North America. While 40,000 are legally harvested each year, some experts estimate that just as many are poached. What's even more disturbing is that the level of poaching is expected to increase in coming years.

In my home State of Kentucky, hunting black bears is prohibited. Bear sightings in my State have increased over the past few years, indicating a stable if not growing population. Although there is no reliable estimate of the number of black bears inhabiting my State, it is believed they are finally beginning to repopulate the mountainous habitats they were driven from many years ago.

Mr. President, while legal hunting of black bears is allowed in many States, evidence of the growth in bear poaching is cause for alarm that recovering bear populations may be imperiled.

According to the U.S. Fish and Wildlife Service, hundreds of bear carcasses are turning up in the United States and Canada, completely intact, except for missing gall bladders, paws, and claws. China, Korea, and other nations in the Far East attach medicinal qualities to the gall bladders of bears. They are believed to cure everything from hemorrhoids and jaundice to hepatitis and impotence. Some Asians take doses of powdered bear gall bladder much like Americans take daily vitamins.

Greed is driving the increased poaching of American black bears. Bear gall bladders, paws, and claws are valuable commodities fetching hundreds if not thousands of dollars. While bear populations in Asia have been devastated as a result, the demand for bear parts has grown along with the affluence of the Pacific rim. Asian nations are increasingly turning to the United States and Canada to meet their enormous demand for bear parts, posing a direct and serious threat to the North American bear population.

State and Federal officials are unable to determine the extent of the problem

and are unable to combat it given current laws and resources. It is estimated that only 5 percent of poaching offenses are reported or detected.

Twenty-two States have prosecuted cases of bear poaching. Poaching rings have been uncovered in the Smoky Mountains and in the Berkshires. Undercover operations have netted dozens of poachers and hundreds of poached bears. A recent gangland style killing in New York was linked to the lucrative bear parts trade when a Korean-American was found murdered in his apartment, after bear gall bladders were taken from his freezer. In the Yukon, officials have even set up a poaching hotline to report illegal bear kills.

Restrictions on the illegal bear parts trade are essential in protecting the American black bear population. An important step was taken last March when the black bear was added to appendix II of the Convention on Trade in Endangered Species [CITES], but more protection is needed. Two of the largest importers of bear parts are not signatories to CITES, leaving a gaping loophole in international bear protection efforts.

This situation is not fair to the black bear, to law-abiding hunters, nor to wildlife enthusiasts throughout the United States. That is why I am introducing the Black Bear Protection Act today. My legislation would take away the financial incentive of the bear parts trade.

The Bear Protection Act of 1992 will assist Kentucky and other States in effectively managing legal hunting at sustainable harvest levels for black bears. It requires the Secretary of Commerce to adopt regulations to prohibit the export of black bears and bear parts from the United States. By giving the Secretary of Commerce direct authority to intercept bear parts at our national border, the Bear Protection Act will effectively and cheaply mitigate the formidable financial incentive to the potential poacher. My legislation would direct a study of the extent of bear poaching so that the most cost-effective enforcement mechanisms can be found. It would also authorize the U.S. Trade Representative to discuss bear conservation efforts when negotiating trade agreements with other countries.

This bill in no way affects legal hunting of black bears. In fact, if my own State wanted to change its current law to allow an open season for bears, my legislation would in no way preclude such a decision.

The Bear Protection Act is a preventive measure which seeks to close loopholes which arise from conflicting State laws. By prohibiting the trade in bear parts at our national border, State, and Federal wildlife officials will have less difficulty maintaining a healthy and sustainable black bear population. They may instead focus their limited resources on other wildlife conservation efforts. With this simple legislation, wildlife enthusiasts and sportsmen can rest assured that their grandchildren will share in our fascination with these mighty mountain dwellers.●

By Mr. PRYOR (for himself, Mr. SASSER, Mr. COHEN, Mr. GRASSLEY, Mr. CONRAD, Mr. LEAHY, Mr. DURENBERGER, Mr. MITCHELL, Mr. HOLLINGS, Mr. BUMPERS, Mr. MCCAIN, and Mr. SANFORD):

S. 3270. A bill to amend title XVIII of the Social Security Act to provide for improved standards to prevent fraud and abuse in the purchasing and rental of durable medical equipment and supplies and prosthetics and orthotics and prosthetic devices under the Medicare Program and for other purposes; to the Committee on Finance.

DURABLE MEDICAL EQUIPMENT FRAUD AND ABUSE PREVENTION ACT OF 1992

Mr. PRYOR. Mr. President, I am pleased to join my colleagues, the chairman of the Budget Committee, Senator SASSER, and the ranking member of the Aging Committee, Senator COHEN, in introducing the Durable Medical Equipment Fraud and Abuse Prevention Act of 1992. This bill will deter the incidence of abusive practices by bad apple equipment suppliers by establishing more rational administrative and payment policy. We are joined today by Senators GRASSLEY, CONRAD, LEAHY, DURENBERGER, MITCHELL, HOLLINGS, BUMPERS, MCCAIN, SANFORD, and others.

Mr. President, for years Congress has heard about and learned of fraudulent, abusive, and extremely costly practices of the fly-by-night scam artists operating in the medical equipment industry. At a time when Congress is struggling to contain health care costs and find ways to improve access to health care, we are all looking for ways to curb such practices. The bill we are introducing today will save well over $100 million. This money could be used to reduce the ever growing budget deficit or perhaps to aid struggling rural hospitals.

Senators SASSER and COHEN have played important leadership roles on this issue and I am pleased to have worked with them on this greatly needed legislation. This bill draws largely from the provisions of S. 1736, the Medicare Durable Medical Equipment Payment Improvement Act of 1991, introduced by Senator SASSER, and S. 1988, the Quality in Medical Equipment and Supplies Act of 1991, introduced by Senator COHEN. I would like to take this opportunity to recognize their ongoing efforts and commitment to address the fraud and abuse within this segment of Medicare.

In the past year, at hearings held both by the Aging Committee and the Budget Committee, we have learned how procedures governing the administration of durable medical equipment payments are far too lax. With Medicare spending going through the roof, failure to address known scams and administrative problems is inexcusable. Although the great majority of supplies are honest, a small number of unscrupulous suppliers continue to gouge Medicare out of enormous amounts of money. Medical equipment suppliers in my home State of Arkansas have urged me to take quick action to prohibit those unscrupulous suppliers from continuing to bilk the system.

The bill we introduce today represents a good working relationship with the medical equipment and supplies industry. I am hopeful that this good relationship will continue. Also, I am appreciative of the cooperation and consultation we have received from the Health Care Financing Administration.

Mr. President, as with any legislation being introduced, this bill represents an attempt to develop what we believe represents a fair response to the varying recommendations of medical equipment suppliers, the Health Care Financing Administration and other experts. In this effort, our goal has always been to strike the appropriate balance between the need for prevention of fraudulent practices and the need for laws flexible enough to allow the honest suppliers to remain in business.

Many suppliers have raised concerns about the current law which prohibits medical equipment suppliers from submitting partially completed CMN's to physicians. As I understand the rationale, this provision was intended to eliminate situations where physicians certify or continue to certify items of questionable value. After consulting with many medical equipment suppliers, I recognize that this approach may be too broad. In response to feedback we have received, this bill contains an alternative, more targeted approach.

The administration has raised concerns about the current payment policy for nebulizers and aspirators. In fact, some suppliers have said that Medicare is paying too much for these supplies. Others have argued to maintain the current payment policy. The provision in the bill is an attempt to balance those concerns. As this legislation moves through the legislative process, I am committed to maintaining my efforts to craft a fair payment policy for these items. It is my hope that all interested parties will continue a constructive dialog on this issue. Above all, none of us wishes to threaten the delicate balance of this important legislation.

Mr. President, I urge the rest of our colleagues to join us as cosponsors and in ensuring that these proposals are enacted into law. I request unanimous consent that a summary and the text of the bill be inserted in the RECORD.

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

S. 3270

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 "Durable Medical Equipment Fraud and Abuse Prevention Act of 1992".

SEC. 2. DURABLE MEDICAL EQUIPMENT.

(a) DEFINITION OF MEDICAL EQUIPMENT AND SUPPLIES.—

(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"MEDICAL EQUIPMENT AND SUPPLIES

"(oo) The term 'medical equipment and supplies" means—

"(1) durable medical equipment (as defined in section 1861(n));

"(2) prosthetic devices (as described in section 1861(s)(8));

"(3) orthotics and prosthetics (as described in section 1861(s)(9));

"(4) home dialysis supplies and equipment (as described in section 1861(s)(2)(F));

"(5) surgical dressings and other devices (as described in section 1861(s)(5));

"(6) immunosuppressive drugs (as described in section 1861(s)(2)(J)); and

"(7) such other items as the Secretary may determine.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after January 1, 1993.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL STANDARDS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—Section 1834 of such Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(i) REQUIREMENTS FOR ISSUANCE AND RENEWAL OF SUPPLIER NUMBERS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—

"(1) PAYMENT.—No payment may be made under this part after July 1, 1993, for items furnished by a supplier of medical equipment and supplies (as defined in section 1861(oo)) unless such supplier meets the national standards specified by the Secretary and possesses a valid supplier number.

"(2) REVISED STANDARDS.—

"(A) IN GENERAL.—The Secretary shall, by no later than January 1, 1995, in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers, revise the national standards for suppliers of medical equipment and supplies to include the requirements listed in subparagraph (B).

"(B) STANDARDS DESCRIBED.—The requirements listed in this subparagraph are that suppliers of medical equipment and supplies shall—

"(i) comply with all applicable State and Federal licensure and regulatory requirements;

"(ii) maintain a physical facility on an appropriate site;

"(iii) have proof of appropriate liability insurance; and

"(iv) meet such other requirements as the Secretary may specify.

"(C) APPLICABILITY OF REVISED STANDARDS.—Beginning after December 31, 1994, each supplier of medical equipment and supplies applying for a supplier number or renewing such supplier's supplier number shall meet the revised standards described in this paragraph.".

(c) CERTIFICATES OF MEDICAL NECESSITY.—

(1) IN GENERAL.—Section 1834 of such Act (42 U.S.C. 1395m), as amended by subsection (b), is amended—

(A) in subsection (a), by striking paragraph (16), and

(B) by adding at the end the following new subsection:

"(j) CERTIFICATES OF MEDICAL NECESSITY.—

"(1) STANDARDIZED CERTIFICATES.—Not later than July 1, 1993, the Secretary shall, in consultation with carriers under this part, develop one or more standardized certificates of medical necessity (as defined in paragraph (3)) for medical equipment and supplies (as defined in section 1861(oo) other than paragraphs (4), (6), and (7)). If a certificate of medical necessity is required by the Secretary, such standardized certificates shall—

"(A) be completed by each physician who prescribes such medical equipment and supplies for any beneficiary under this part, and

"(B) be transmitted to the supplier and then to the carrier processing the claim for payment for such medical equipment and supplies under this part.

"(2) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF CERTIFICATES OF MEDICAL NECESSITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a supplier of medical equipment and supplies described in paragraph (1) may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed certificates of medical necessity.

"(B) EXCEPTION FOR CERTAIN BILLING INFORMATION.—Subparagraph (A) shall not apply with respect to a certificate of medical necessity to the extent that such certificate contains only information completed by the supplier of medical equipment and supplies identifying such supplier and the beneficiary to whom such medical equipment and supplies are furnished, a description of such medical equipment and supplies, any product code identifying such medical equipment and supplies, and any other administrative information identified by the Secretary. In the event a supplier provides a certificate of medical necessity containing information permitted under this subparagraph, such certificate shall also contain the lesser of the supplier's charge or the fee schedule amount for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

"(C) PENALTY.—Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).

"(3) DEFINITION.—For purposes of this subsection, the term 'certificate of medical necessity' means a form or other document containing information required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to certificates of medical necessity on or after January 1, 1993.

(d) COVERAGE AND REVIEW CRITERIA FOR CERTAIN MEDICAL EQUIPMENT AND SUPPLIES.—Section 1834 of such Act (42 U.S.C. 1395m), as amended by subsection (c), is amended by adding at the end the following new subsection:

"(k) COVERAGE AND REVIEW CRITERIA.—

"(1) DEVELOPMENT AND ESTABLISHMENT.—Not later than July 1, 1993, the Secretary, in consultation with representatives of suppliers of medical equipment and supplies (as defined in section 1861(oo) other than paragraphs (4), (6), and (7)), individuals enrolled under this part, and appropriate medical specialty societies, shall develop and establish uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies (as so defined) selected in accordance with the standards described in paragraph (2). The Secretary shall publish the criteria as part of the instructions provided to fiscal intermediaries and carriers under this part and no further publication, including publication in the Federal Register, shall be required.

"(2) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under paragraph (1) if the Secretary finds that—

"(A) the item is frequently purchased or rented by beneficiaries;

"(B) the item is frequently subject to a determination that such item is not medically necessary; or

"(C) the coverage or utilization criteria applied to the item (as of the date of the enactment of this subsection) is not consistent among carriers.

"(3) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether items not included among the items selected under paragraph (1) should be made subject to uniform national coverage and utilization review criteria, and, if appropriate, shall develop and apply such criteria to such additional items.

"(4) REPORT ON EFFECT OF UNIFORM CRITERIA ON UTILIZATION OF ITEMS.—Not later than January 1, 1994, the Secretary shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate analyzing the impact of the uniform criteria established under paragraph (1) on the utilization of items of medical equipment and supplies by individuals enrolled under this part.".

(e) PROHIBITION AGAINST MULTIPLE BILLING NUMBERS.—

(1) IN GENERAL.—Section 1834 of such Act (42 U.S.C. 1395m), as amended by subsection (d), is amended by adding at the end the following new subsection:

"(l) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies (as defined in section 1861(oo)) unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after July 1, 1993.

(f) DEFINITION OF INDUCEMENTS AS KICKBACKS CLARIFIED.—

(1) IN GENERAL.—Section 1128B(b)(3)(B) of such Act (42 U.S.C. 1320a-7b(b)(3)(B)) is

amended by inserting before the semicolon "(except that in the case of a contract supply arrangement between a skilled nursing facility and a supplier of medical supplies and equipment (as defined in section 1861(oo) other than (4), (6), and (7)), such employment shall not be considered bona fide to the extent that it includes tasks of a clerical and cataloging nature in transmitting to suppliers assignment rights of individuals eligible for benefits under part B of title XVIII, or performance of warehousing or stock inventory functions)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to services furnished on or after January 1, 1993.

(g) LIMITATION ON BENEFICIARY LIABILITY.—

(1) IN GENERAL.—Section 1879 of such Act (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(h) If a supplier of medical equipment and supplies (as defined in section 1861(oo))—

"(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1834(i);

"(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1834(a)(15);

"(3) is excluded from participation under this title; or

"(4) furnishes an item or service to a beneficiary for which payment is denied under section 1862(a)(1);

any expenses incurred for items and services furnished to an individual by such a supplier on an unassigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services, unless the supplier informs the individual in advance that payment under this part will not be made for the item or services and the individual agrees to pay for the item or service.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items or services furnished on or after July 1, 1993.

(h) TREATMENT OF NEBULIZERS AND ASPIRATORS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(3)(A) of such Act (42 U.S.C. 1395m(a)(3)(A)) is amended by striking "ventilators, aspirators, IPPB machines, and nebulizers" and inserting "ventilators and IPPB machines".

(2) PAYMENT FOR SUPPLIES RELATING TO NEBULIZERS AND ASPIRATORS.—Section 1834(a)(7)(A) of such Act (42 U.S.C. 1395m(a)(7)(A)) is amended by striking "and" at the end of clause (v), by striking the period at the end of clause (vi) and inserting "; and", and by inserting after clause (vi) the following new clause:

"(vii) In the case of supplies to be used in conjunction with a nebulizer or aspirator for which payment is made under this paragraph, payment shall be in accordance with paragraph (2) of this subsection.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after January 1, 1993.

(i) PAYMENT FOR OSTOMY SUPPLIES, TRACHEOSTOMY SUPPLIES, UROLOGICALS, SURGICAL SUPPLIES, AND OTHER MEDICAL SUPPLIES.—

(1) IN GENERAL.—Section 1834(h)(1) of such Act (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION FOR CERTAIN ITEMS.—Payment for ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings shall be made in accordance with subparagraphs (B) and (C) of section 1834(a)(2) (except that in the case of surgical dressings, the national limited payment amount shall be computed based on local payment amounts using average reasonable charges for the six-month period ending June 30, 1992, increased by the covered item update for 1993).".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply with respect to items furnished on or after January 1, 1993.

(B) SURGICAL SUPPLIES.—The amendment made by paragraph (1) with respect to surgical dressings shall apply to items supplied on or after July 1, 1993.

(j) STUDIES.—

(1) SUPPLIES AND SERVICES IN NURSING FACILITIES.—The Comptroller General of the United States shall conduct a study and report to the Congress no later than January 1, 1994, on the types, volume, and utilization of services and supplies furnished under contract or under arrangement with suppliers to individuals eligible for benefits under title XVIII of the Social Security Act residing in skilled nursing facilities and nursing facilities.

(2) DESCRIPTIONS RELATING TO CERTAIN CODES.—The Comptroller General of the United States shall conduct a study beginning no earlier than July 1, 1993, and report to the Congress no later than January 1, 1994, on—

(A) whether changes made by the Department of Health and Human Services to the descriptions relating to the codes for medical equipment and supplies (as defined in section 1861(oo) of the Social Security Act other than paragraphs (4), (6), and (7))—

(i) accurately reflect the items being furnished under such codes, and

(ii) are sufficiently explicit to distinguish between items of varying quality and price, and

(B) recommendations for additional changes that would improve the descriptions relating to the codes for such items.

DURABLE MEDICAL EQUIPMENT FRAUD AND ABUSE PREVENTION ACT OF 1992

STANDARDS FOR OBTAINING PROVIDER NUMBERS

HCFA and carriers provide little scrutiny of suppliers when issuing supplier numbers. Under current policy, suppliers can easily have multiple provider numbers which allow them to overbill, double-bill or avoid oversight by "jumping" from one provider to another.

This bill requires the Secretary to establish more stringent uniform national standards for suppliers of durable medical equipment and prosthetics and orthotics.

PROHIBITION AGAINST MULTIPLE BILLING NUMBERS

The bill prohibits the Secretary from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

UNIFORM NATIONAL COVERAGE AND UTILIZATION REVIEW REQUIREMENTS

Carriers have a lot of discretion in determining utilization and coverage policy, resulting in wide variations in payment and coverage. For example, one carrier may pay for one box of ostomy kits per month per beneficiary, while another carrier may pay for an unlimited number.

HCFA is in the process of developing uniform coverage and utilization review policies for 100 items of its own choosing. This bill requires the Secretary, in consultation with representatives of DME suppliers, beneficiaries and medical specialty organizations, to develop and establish uniform national coverage and utilization review criteria for 200 items. The Secretary is required to annually review the items and determine whether items not on the list should be subject to uniform criteria. Also, the Secretary is required to report to Congress on the impact of these criteria on the utilization of items.

CERTIFICATES OF MEDICAL NECESSITY

OBRA90 prohibited suppliers of DME from distributing completed or partially completed certificates of medical necessity (CMNs) to physicians or Medicare beneficiaries. Many suppliers (and some physicians) have complained that the forms are too long and time consuming for physicians and that this provision may decrease beneficiary access to DME.

This bill modifies this provision by permitting suppliers to complete information identifying the beneficiary, the supplier and provider, as well as a description of the item and a product code identifying the item. The physician would still be required to complete all information related to medical necessity.

Also, because there are no standardized medical necessity certificates, this bill requires the Secretary to develop one or more standardized certificates of medical necessity for DME and prosthetics and orthotics.

MODIFICATION OF ANTI-KICKBACK LAW

Some financial arrangements between nursing homes and providers appear to circumvent Medicare anti-kickback statutes. For example, suppliers and other third party billers pay nursing homes for "employment" costs of paperwork and warehousing of equipment as an inducement for business. The bill strengthens the anti-kickback statute by clarifying the definition of inducements as kickbacks.

LIMITATIONS ON BENEFICIARY LIABILITY

There are no limits on balance bill for DME, and there are no circumstances specified in current law under which beneficiaries are not liable for charges for DME furnished by suppliers on an unassigned basis. This bill stipulates circumstances (such as the supplier is excluded from Medicare participation of Medicare has denied payment for the item in advance) under which Medicare beneficiaries are not financially liable for DME or prosthetics and orthotics furnished by a supplier on an unassigned basis.

TREATMENT OF NEBULIZERS AND ASPIRATORS

Nebulizers and aspirators are included in a fee schedule category entitled "items requiring frequent and substantial servicing." Items in this category can only be rented. The bill establishes a more rational payment policy for these items.

TREATMENT OF CERTAIN SUPPLIES AS DME

Under present law, ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits. An inquiry by the Budget Committee found wide variation in the prices of these items and also found that these items were subject to abusive billing practices. This bill requires that these items be reimbursed under a national fee schedule similar to the DME fee schedule.

GAO STUDIES

The bill requires a GAO study on services and supplies in nursing homes and on variations in quality of equipment.

Mr. COHEN. Mr. President, I am pleased to join with Senators PRYOR and SASSER in introducing this measure to protect the Medicare Program from abuse by unscrupulous medical equipment suppliers and to streamline administrative and payment policies for durable medical equipment. The bill we are introducing today, which was developed in consultation with the Health Care Financing Administration [HCFA], consolidates two bills that Senator SASSER and I introduced to combat fraud and abuse in the Medicare Durable Medical Equipment Program last year—S. 1988 and S. 1736. This legislation will save over $100 million over the next 5 years, and I thank Senator PRYOR for his leadership and assistance in drafting this consensus proposal.

While the overwhelming majority of the Nation's 160,000 medical equipment suppliers who do business with Medicare are dedicated and honest professionals, the rapid growth and sheer size of the program have greatly increased Medicare's vulnerability to fraud and abuse. The legislative reforms contained in the package we are introducing today are the result of over a year's worth of investigations and hearings conducted by both the Senate Special Committee on Aging and the Senate Budget Committee into the practices of unethical durable medical equipment dealers who have taken advantage of weaknesses in the system to bleed millions of dollars from the Medicare Program.

In April 1991, the minority staff of the Aging Committee completed a year-long investigation which revealed the shocking practices of fly-by-night telemarketing operations that made thousands of calls to unsuspecting Medicare beneficiaries urging them to accept what was described as "free medical equipment"—equipment that was rarely needed, generally of inferior quality, of little or no therapeutic value, and which even could prove dangerous. These telemarketers had learned to manipulate the Medicare system by shopping around for the States with the highest reimbursement rates and most generous coverage and utilization criteria.

This investigation and subsequent Aging Committee hearings revealed that it is far too easy for unethical medical equipment suppliers to gain access to the Medicare Program. Durable medical equipment providers are not required to be certified or licensed in order to do business with Medicare. In fact, they have not had to meet any kind of standards whatsoever.

Carrier oversight of suppliers has also been lax. Most carriers do not keep track of their suppliers, and their billing numbers are rarely canceled, even when the supplier has been excluded from the Medicare Program. Insufficient carrier oversight also enables suppliers to be issued multiple billing numbers, allowing them to double bill, overbill, or avoid being caught for fraudulent activities.

Largely as a result of congressional pressure, HCFA has taken some action to curb fraud and abuse in the Durable Medical Equipment [DME] Program. In June, HCFA issued final regulations reducing the number of Medicare carriers processing DME claims from 34 to 4, which should bring greater uniformity and consistency to coverage and payment decisions. In addition, the regulations will require all claims to be submitted to the carrier serving the area where the beneficiary resides and uses the item, thus eliminating the ability of suppliers to engage in carrier shopping. These two reforms were included in both S. 1736 and S. 1988, and I am pleased that HCFA has implemented them administratively.

While these new regulations are a step in the right direction, we believe that Medicare remains vulnerable to abuse, and that there is more that we can and should do to strengthen the program. The legislation we are introducing today will not only help to combat fraud and abuse, but it will also establish more rational payment and administrative policies for durable medical equipment.

Among other provisions, the bill revises and strengthens the national standards with which suppliers must comply in order to receive a supplier number. HCFA recently issued regulations requiring suppliers to disclose certain ownership information and to certify that they meet certain basic operational standards, such as repairing and maintaining rental items, answering questions and complaints, and accepting returns. This legislation would strengthen those standards by requiring that suppliers also comply with all applicable State and Federal licensure and regulatory requirements, maintain a physical facility on an appropriate site, and have proof of appropriate liability insurance.

The legislation also prohibits the Secretary of Health and Human Services from issuing more than one billing number to a supplier, unless more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

The bill also provides for more uniform national coverage and utilization review requirements. HCFA is currently in the process of developing uniform coverage and utilization criteria for 100 items of its own choosing. This legislation would require the Secretary, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, to expand that list to 200 items which are either frequently purchased or rented or which are frequently subject to a determination that the item is not medically necessary. An item may also be included if the coverage or utilization criteria applied to that item is not consistent among carriers.

The Omnibus Budget Reconciliation Act of 1990 prohibited suppliers of DME from distributing completed or partially completed certificates of medical necessity [CMN's] to physicians or Medicare beneficiaries. Both suppliers and physicians have complained that physicians do not always have the product information necessary to complete the form, and that the forms are too long and time consuming for physicians to complete, which may decrease beneficiary access to needed equipment and supplies.

This legislation modifies the current prohibition by permitting suppliers to complete the administrative section of the form, that is, information identifying the beneficiary, supplier or provider; the description of the item to be provided; and a product code identifying the item. If the supplier does choose to complete this information, he or she must also include price information to ensure that the physician is aware of the cost of the item. The physician would still be required to complete all information related to medical necessity. Additionally, because there are no standardized forms to document medical necessity, the bill requires the Secretary to develop standardized certificates of medical necessity for DME, prosthetics and orthotics.

The legislation would also modify current antikickback law. Currently some financial arrangements between nursing homes and providers appear to circumvent Medicare antikickback statutes. For example, suppliers and other third party billers pay nursing homes for employment costs of paperwork and warehousing of equipment as an inducement for business. This bill strengthens the antikickback statute by clarifying the definition of inducement as kickbacks.

In addition, there currently are no balance billing limits applied to DME, and there are no circumstances specified in current law under which beneficiaries are not liable for charges for DME furnished by suppliers on an unassigned basis. This legislation stipulates circumstances—such as when the supplier has been excluded from the Medicare Program or when Medicare has denied payment for the item in advance—under which Medicare beneficiaries are not financially liable for DME or prosthetics and orthotics furnished by a supplier on an assigned basis.

The legislation also changes treatment of nebulizers and aspirators. Currently these items are included in a fee schedule category entitled "items requiring frequent and substantial servicing." Items in this category can only be rented, even if it may be more cost effective for the beneficiary to pur-

chase them outright. This bill would give the Secretary of Health and Human Services the authority to remove nebulizers and aspirators from the "items requiring frequent and substantial servicing" category.

Finally, under present law, ostomy supplies, tracheostomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits. An inquiry by the Budget Committee found wide variation in the prices of these items and also found that these items were subject to abusive billing practices. This legislation requires that these items be reimbursed under a national fee schedule similar to the DME fee schedule.

Mr. President, the reforms we are introducing today are critical if we are to ensure that scarce Medicare dollars are not wasted on overpriced or useless medical equipment. I also want to express my appreciation to Senators PRYOR and SASSER and their staffs for all of their work on this measure, and I urge my colleagues to support us in this effort.

Mr. SANFORD. Mr. President, I am pleased to be a cosponsor of the Durable Medical Equipment Fraud and Abuse Act of 1992, legislation which I cosponsored when it was first introduced in 1991, and which I still believe is needed today.

Last year, a combined investigation uncovered a frightening, multi-State pattern of fraud and abuse within Medicare's Durable Medical Equipment Program ranging from unbundling, or billing for each separate component of a piece of equipment, falsifying claims, and kickback schemes, to actually forging a physician's signature on certificates of medical necessity. These fraudulent activities are wasting millions of dollars of the taxpayers' money, and squandering resources that could and should be used for Medicare beneficiaries.

Most suppliers of durable medical equipment are hardworking businessowners who run honest, ethical, and upright companies. North Carolina has been relatively free of the abuses many other States have experienced. But all Medicare beneficiaries ultimately pay the price for the fraudulent and wasteful spending that has gone on in the past. These abuses of a well-intended program must stop.

Many individual suppliers, as well as the national organizations which represent them, have cooperated and contributed a great deal in the formulation of an appropriate strategy to combat waste and abuse in the Medicare Program, and they are to be congratulated for their efforts.

This legislation is a reasonable and rational solution to this problem which is supported by the honest members of the medical equipment and supplies industry. I believe that we owe it to both Medicare beneficiaries and current taxpayers to take whatever steps are necessary to eliminate waste and abuse in the Durable Medical Equipment Program. Medicare funds should be used as they were intended—to provide quality, cost-effective medical care for those who need it.

I commend my colleagues for introducing this legislation and I am pleased to be a cosponsor.

ADDITIONAL COSPONSORS

S. 532

At the request of Mr. BOREN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 532, a bill to amend the Internal Revenue Code of 1986 to prohibit the retroactive application of Treasury Department regulations and rulings.

S. 1139

At the request of Mr. NUNN, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1139, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

S. 1966

At the request of Mr. BIDEN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1966, a bill to establish a national background check procedure to ensure that persons working as child care providers do not have a criminal history of child abuse, to initiate the reporting of all State and Federal child abuse crimes, to establish minimum guidelines for States to follow in conducting background checks and provide protection from inaccurate information for persons subjected to background checks, and for other purposes.

S. 2204

At the request of Mr. DURENBERGER, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 2204, a bill to amend title 23, United States Code, to repeal the provisions relating to penalties with respect to grants to States for safety belt and motorcycle helmet traffic safety programs.

S. 2667

At the request of Mr. HEFLIN, the names of the Senator from Ohio [Mr. GLENN] and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 2667, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use.

S. 2922

At the request of Mr. COHEN, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 2922, a bill to assist the States in the enactment of legislation to address the criminal act of stalking other persons.

S. 2941

At the request of Mr. RUDMAN, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 2941, a bill to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes.

S. 2949

At the request of Mr. KENNEDY, the names of the Senator from Ohio [Mr. METZENBAUM] and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 2949, a bill to amend the Public Health Service Act to provide for the conduct of expanded research and the establishment of innovative programs and policies with respect to traumatic brain injury, and for other purposes.

S. 2957

At the request of Mr. CHAFEE, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 2957, a bill to amend the Internal Revenue Code of 1986 to exclude from the gross estate the value of land subject to a qualified conservation easement if certain conditions are satisfied, to permit a qualified conservation contribution where the probability of surface mining is remote, and to defer some of the scheduled reductions in estate tax rates.

S. 3195

At the request of Mr. GLENN, the names of the Senator from Colorado [Mr. BROWN], the Senator from Oregon [Mr. HATFIELD], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 3195, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United States' involvement in World War II.

S. 3221

At the request of Mr. LAUTENBERG, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 3221, a bill to deny most-favored-nation status to Serbia and Montenegro unless certain conditions are met.

S. 3257

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 3257, a bill to create a separate tariff classification for certain herbal liqueurs.

SENATE JOINT RESOLUTION 278

At the request of Mr. DODD, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Nevada [Mr. BRYAN], the Senator from Maryland [Mr. SARBANES], the Senator from New York [Mr. D'AMATO], the Senator from Montana [Mr.

BURNS], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. SIMON], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 278, a joint resolution designating the week of January 3, 1993, through January 9, 1993, as "Braille Literacy Week."

SENATE JOINT RESOLUTION 327

At the request of Mr. BRYAN, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from Arizona [Mr. DECONCINI], the Senator from Delaware [Mr. BIDEN], the Senator from Connecticut [Mr. DODD], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Arizona [Mr. MCCAIN], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of Senate Joint Resolution 327, a joint resolution to designate October 8, 1992, as "National Firefighters Day."

SENATE JOINT RESOLUTION 329

At the request of Mr. PACKWOOD, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Connecticut [Mr. DODD], the Senator from California [Mr. CRANSTON], the Senator from Georgia [Mr. NUNN], the Senator from Arizona [Mr. DECONCINI], the Senator from Alabama [Mr. HEFLIN], the Senator from North Dakota [Mr. CONRAD], the Senator from Michigan [Mr. LEVIN], the Senator from Maryland [Ms. MIKULSKI], the Senator from Maine [Mr. MITCHELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Alabama [Mr. SHELBY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Oklahoma [Mr. BOREN], the Senator from Washington [Mr. ADAMS], the Senator from Tennessee [Mr. SASSER], the Senator from Ohio [Mr. GLENN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Illinois [Mr. SIMON], the Senator from New York [Mr. MOYNIHAN], the Senator from Nebraska [Mr. EXON], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Indiana [Mr. COATS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Vermont [Mr. JEFFORDS], the Senator from Utah [Mr. HATCH], the Senator from Mississippi [Mr. COCHRAN], the Senator from Kansas [Mr. DOLE], the Senator from California [Mr. SEYMOUR], and the Senator from North Dakota [Mrs. BURDICK] were added as cosponsors of Senate Joint Resolution 329, a joint resolution to designate February 4, 1993 and February 3, 1994, as "National Women and Girls in Sports Day."

SENATE JOINT RESOLUTION 333

At the request of Mr. DECONCINI, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of Senate Joint Resolution 333, a joint resolution designating the week beginning February 7, 1993, as "Lincoln Legacy Week."

SENATE JOINT RESOLUTION 336

At the request of Mr. AKAKA, the names of the Senator from Missouri [Mr. DANFORTH], the Senator from Indiana [Mr. LUGAR], the Senator from Illinois [Mr. SIMON], and the Senator from Montana [Mr. BURNS] were added as cosponsors of Senate Joint Resolution 336, a joint resolution designating the week beginning November 8, 1992, as "Hire a Veteran Week."

SENATE CONCURRENT RESOLUTION 127

At the request of Mr. DECONCINI, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Concurrent Resolution 127, a concurrent resolution to express the sense of the Congress that women's soccer should be a medal sport at the 1996 centennial Olympic games in Atlanta, GA.

SENATE RESOLUTION 346—REGARDING THE CAPTURE OF ABIMAEL GUZMAN

Mr. COATS submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 346

Whereas Abimael Guzman is the leader of the Maoist communist, terrorist group known as Shining Path;

Whereas Shining Path declared war on the Government of Peru in 1980, and, since that time, has been responsible for tremendous economic devastation and terror and contributed to the death of more than 25,000 Peruvian men, women, and children;

Whereas nearly two-thirds of the world supply of cocaine is produced from coca leaf grown in Peru;

Whereas Shining Path promotes and profits from the consumption of illicit narcotics in the United States;

Whereas Shining Path provided armed protection for narcotics traffickers in the Upper Huallaga Valley of Peru;

Whereas Abimael Guzman was captured by the members of the Peruvian Counter-Terrorism National Directorate of the Technical Police of the Government of Peru on September 12, 1992;

Whereas the capture of Abimael Guzman resulted from careful intelligence work carried out under hazardous conditions;

Whereas the capture of Abimael Guzman and several of his immediate subordinates represents an important victory for the Government of Peru in the fight of that government against terrorism and international narcotics trafficking;

Whereas the capture of Abimael Guzman is an important step in the fight against violent anti-democratic forces that have undermined constitutional government in Peru;

Whereas the United States Government has been concerned with the April 5, 1992, decision of President Fujimori of Peru to dissolve the Congress and judiciary of the Government of Peru and to rule by decree; and

Whereas the United States Government has encouraged President Fujimori to move expeditiously to restore constitutional democracy in Peru: Now, therefore, be it

Resolved, That the Senate hereby—

(1) Supports the Government of Peru in its determination to fight the violent, anti-democratic terrorist group known as Shining Path;

(2) Commends and congratulates the members of the Peruvian Counter-Terrorism National Directorate of the Technical Police who conceived and executed the plan to capture Abimael Guzman, the leader of Shining Path, and several of his immediate subordinates;

(3) Encourages the people in all sectors of Peruvian society to commit themselves to the long-term process of overcoming the ravaging social effects of the activities of Shining Path and creating the necessary conditions for the maintenance of a viable constitutional democracy and viable economy in Peru;

(4) Encourages the Government of Peru to hold free and fair elections for a constituent assembly on November 22, 1992, under international supervision by the Organization of American States; and

(5) Encourages the Government of Peru to continue its efforts to fight terrorism and international narcotics trafficking and to establish the rule of law throughout Peru.

SENATE RESOLUTION 347—AUTHORIZING THE PRODUCTION OF CERTAIN DOCUMENTS

Mr. JOHNSTON (for Mr. MITCHELL, for himself, and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 347

Whereas, in the case of *United States* v. *Charles H. Keating, Jr., et al.*, No. Cr. 91-1021-MRP & 92-110-MRP, pending in the United States District Court for the Central District of California, the United States Attorney has requested that the Select Committee on Ethics produce documents that the Committee obtained by subpoena;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Select Committee on Ethics is authorized to produce documents in *United States* v. *Charles H. Keating, Jr., et al.*, except concerning matters for which a privilege should be asserted.

SENATE RESOLUTION 348—AUTHORIZING THE PRODUCTION OF CERTAIN RECORDS

Mr. JOHNSTON (for Mr. MITCHELL, for himself, and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 348

Whereas, the Permanent Subcommittee on Investigations of the Committee on Govern-

mental Affairs has been conducting an investigation of allegations of corruption in professional boxing;

Whereas, a law enforcement entity has requested access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide, to law enforcement and regulatory entities requesting access, records of the Subcommittee's investigation of allegations of corruption in professional boxing.

AMENDMENTS SUBMITTED

TAX ENTERPRISE ZONES ACT

SMITH (AND GRAMM) AMENDMENT NO. 3161

Mr. SMITH (for himself and Mr. GRAMM) proposed an amendment to the bill (H.R. 11) to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes, as follows:

At the end of title VIII of the committee amendment, add the following:

SEC. . TAXPAYER DEBT BUY-DOWN ACT.

(a) SHORT TITLE.—This section may be cited as the "Taxpayer Debt Buy-Down Act".

(b) DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.—

(1) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT.

"Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

"(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

"(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term 'adjusted income tax liability' means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund)."

(2) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation for reduction of public debt."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(c) PUBLIC DEBT REDUCTION TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (Relating to trust fund code) is amended by adding at the end the following section:

"SEC. 9511. PUBLIC DEBT REDUCTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Debt Reduction Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

"(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be available only for purposes of paying at maturity, or to redeem or buy before maturity, any obligation of the Federal Government included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from such Trust Fund shall be canceled and retired and may not be reissued."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9511. Public Debt Reduction Trust Fund."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(d) TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.—

(1) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

"SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

"(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session (other than the One Hundred Second Congress), and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the beginning of that session of Congress, as estimated by the Department of the Treasury on May 1 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257, except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequesters) and (2) the net deficit change that has resulted from direct spending legislation.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligational authority reduced under this section shall be done in a manner that makes such reductions permanent.

"(2) EXEMPT ACCOUNT.—No order issued under this part may—

"(A) reduce benefits payable to the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

"(B) reduce payments for net interest (all of major functional category 900); or

"(C) make any reduction in the following accounts;

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

"National Credit Union Administration, credit union share insurance fund; or

"Resolution Trust Corporation.".

(2) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in subsection (a), by inserting before the item relating to August 10 the following:

"May 1 . . . Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue Code of 1986.";

(B) in subsection (d)(1), by inserting ", and sequestration to reduce the public debt,";

(C) in subsection (d), by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

"(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

"(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b).'"; and

(D) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on May 1.".

(3) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this subsection. The amendments made by this subsection shall cease to have any effect after the first fiscal year during which there is no public debt.

SMITH AMENDMENT NO. 3162

Mr. SMITH proposed an amendment to amendment No. 3161 proposed by him (and Mr. GRAMM) to the bill H.R. 11, supra; as follows:

Beginning on page 1, line 3, of the pending amendment, strike all after the word "TAXPAYER" and insert in lieu thereof the following:

DEBT BUY-DOWN ACT.

(a) SHORT TITLE.—This section may be cited as the "Taxpayer Debt Buy-Down Act".

(b) DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.—

(1) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT.

"Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

"(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

"(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term 'adjusted income tax liability' means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund)."

(2) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation for reduction of public debt."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(c) PUBLIC DEBT REDUCTION TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (Relating to trust fund code) is amended by adding at the end the following section:

"SEC. 9511. PUBLIC DEBT REDUCTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Debt Reduction Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

"(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be available only for purposes of paying at maturity, or to redeem or buy before maturity, any obligation, any obligation of the Federal Government included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from such Trust Fund shall be canceled and retired and may not be reissued."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9511. Public Debt Reduction Trust Fund."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(d) TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.—

(1) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

"SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

"(a) SEQUESTRATION.—Nothwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session (other than the One Hundred Second Congress), and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the beginning of that session of Congress, as estimated by the Department of the Treasury on May 2 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257, except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequesters) and (2) the net deficit change that has resulted from direct spending legislation.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligational authority reduced under this section shall be done in a manner that makes such reductions permanent.

"(2) EXEMPT ACCOUNTS.—No order issued under this part may—

"(A) reduce benefits payable to the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

"(B) reduce payments for net interest (all of major functional category 900); or

"(C) make any reduction in the following accounts:

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

"National Credit Union Administration, credit union share insurance fund; or

"Resolution Trust Corporation."

(2) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in subsection (a), by inserting before the item relating to August 10 the following:

"May 2—Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue code of 1986.";

(B) in subsection (d)(1), by inserting ", and sequestration to reduce the public debt,";

(C) in subsection (d), by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

"(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

"(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b)."; and

(D) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on May 2.".

(3) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this subsection. The amendments made by this subsection shall cease to have any effect after the first fiscal year during which there is no public debt.

DECONCINI (AND DOMENICI) AMENDMENT NO. 3163

Mr. DECONCINI (for himself and Mr. DOMENICI) proposed an amendment to the bill H.R. 11, supra; as follows:

At the end of title VIII, insert:

SEC. . ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CERTAIN ON-SITE DAY-CARE FACILITIES.

(a) ALLOWANCE OF CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by section 8205, is amended by adding at the end thereof the following new section:

"SEC. 45A. EMPLOYER ON-SITE DAY-CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site day-care facility credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified investment in property placed in service during such taxable year as part of a qualified day-care facility.

"(b) LIMITATION.—The credit allowable under subsection (a) with respect to any qualified day-care facility shall not exceed $150,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED INVESTMENT.—The term 'qualified investment' means the amount paid or incurred to acquire, construct, rehabilitate, or expand property—

"(A) which is to be used as part of a qualified day-care facility, and

"(B) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable.

Such term includes only amounts properly chargeable to capital account.

"(2) QUALIFIED DAY-CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified day-care facility' means a facility—

"(i) operated by an employer to provide dependent care assistance for enrollees, at least 30 percent of whom are dependents of employees of employers to which a credit under subsection (a) with respect to the facility is allowable,

"(ii) the principal use of which is to provide dependent care assistance described in clause (i),

"(iii) located on the premises of such employer,

"(iv) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a day-care facility, and

"(v) the use of which (or the eligibility to use) does not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

"(B) MULTIPLE EMPLOYERS.—With respect to a facility jointly operated by more than 1 employer, the term 'qualified day-care facility' shall include any facility located on the premises of 1 employer and within a reasonable distance from the premises of the other employers.

"(d) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

"(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified day-care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified day-care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

"(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) NO DOUBLE BENEFIT.—

"(1) REDUCTION IN BASIS.—For purposes of this subtitle—

"(A) IN GENERAL.—If a credit is determined under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

"(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1996."

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b), as amended by section 8205, is amended—

(A) by striking "plus" at the end of paragraph (8),

(B) by striking the period at the end of paragraph (9), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(10) the employer on-site day-care facility credit determined under section 45."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 45A. Employer on-site day-care facility credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on and after the date of the enactment of this Act.

SEC. . DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (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) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—To the extent that the amount of employee remuneration for any covered employee exceeds $1,000,000 for the taxable year, no deduction shall be allowed under this chapter for an amount equal to 25 percent of the amount of such excess.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS.—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

BUMPERS (AND OTHERS) AMENDMENT NO. 3164

Mr. BUMPERS (for himself, Mr. KASTEN, Mr. CRANSTON, Mr. NICKLES, and Mr. KOHL) proposed an amendment to the bill H.R. 11, supra, as follows:

On page 972, beginning with line 17, strike all through page 973, line 13, and insert:

Clause (ii) of section 6654(d)(1)(C) is amended by striking the last sentence.

PRESSLER AMENDMENT NO. 3165

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill H.R. 11, supra; as follows:

At the appropriate place, insert the following;

TITLE —CAR THEFT PREVENTION AND DETERRENCE

SEC. 01. SHORT TITLE.

This title may be cited as the "Car Theft Prevention and Deterrence Act".

SEC. 02. PURPOSE.

It is the purpose of this Act to take effective measures to thwart motor vehicle theft for transportation (including joyriding) and the use of stolen vehicles in the commission of a crime (including theft for profit, theft to defraud insurance companies, and carjacking).

Subtitle A—Enhanced Penalties for Auto Theft

SEC. 11. FEDERAL PENALTIES FOR ARMED ROBBERIES OF AUTOS.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—

(1) IN GENERAL.—Chapter 103 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 2119. Motor vehicles

"A person who, possessing a firearm (as defined in section 921), take a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from a person or in the presence of another person by force and violence or by intimidation, or attempts to do so—

"(1) shall be fined under this title, imprisoned not more than 15 years, or both; and

"(2) if serious bodily injury (as defined in section 1365) results, shall be fined under this title, imprisoned not more than 25 years, or both; and

"(3) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.".

(2) TECHNICAL AMENDMENT.—The chapter analysis for chapter 103 of title 18, United States Code, is amended by adding at the end the following new item:

"2119. Motor vehicles.".

(b) SENSE OF CONGRESS.—In view of the increase of motor vehicle theft with its growing threat to human life and to the economic well-being of the Nation, it is the sense of Congress that the Attorney General, acting through the Federal Bureau of Investigation and the United States Attorneys, should work with State and local officials to investigate car thefts, including violations of section 2119 of title 18, United States Code, for armed carjacking, and, as appropriate and consistent with the proper exercise of prosecutorial discretion, prosecute persons who violate that section and other Federal laws relating to car theft.

SEC. 12. IMPORTATION AND EXPORTATION.

Section 553(a) of title 18, United States Code, is amended by striking "fined not more than $15,000 or imprisoned not more than five years" and inserting "fined under this title or imprisoned not more than 10 years".

SEC. 13. TRAFFICKING IN STOLEN VEHICLES.

Each of sections 2312 and 2313(a) of title 18, United States Code, is amended by striking "fined not more than $5,000 or imprisoned not more than five years" and inserting "fined under this title or imprisoned not more than 10 years".

SEC. 14. CIVIL AND CRIMINAL FORFEITURE.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

"(F) Any property, real or personal, that represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

"(i) section 511 (altering or removing motor vehicle identification numbers);

"(ii) section 553 (importing or exporting stolen motor vehicles);

"(iii) section 2119 (armed robbery of automobiles);

"(iv) section 2132 (transporting stolen motor vehicles in interstate commerce); or

"(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).".

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (4) the following new paragraph:

"(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

"(A) section 511 (altering or removing motor vehicle identification numbers);

"(B) section 553 (importing or exporting stolen motor vehicles);

"(C) section 2119 (armed robbery of automobiles);

"(D) section 2132 (transporting stolen motor vehicles in interstate commerce); or

"(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce),

shall order that the person forfeit to the United States any property real or personal that represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of the violation.".

Subtitle B—Targeted Law Enforcement

SEC. 31. PURPOSE.

The purpose of this subtitle is to supplement the Edward Byrne Memorial State and Local Law Enforcement Assistant Program under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 500 et seq.) to help the States to curb motor vehicle thefts and the related violence.

SEC. 32. DEFINITIONS.

In this subtitle:

"Anti Car Theft Committee" means an entity the resources of which are devoted entirely to the activities described in section 34(b)(4).

"Director" means the Director of the Bureau of Justice Assistance of the Department of Justice.

"State" has the meaning stated in section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791).

SEC. 33. GRANT AUTHORIZATION.

The Director shall make grants to Anti Car Theft Committees that submit applications in compliance with the requirements of this chapter.

SEC. 34. APPLICATION.

(a) SUBMISSION.—To be eligible to receive a grant under this chapter, the chief executive of an Anti Car Theft Committee shall submit an application to the Director.

(b) CONTENT.—An application under subsection (a) shall include the following:

(1) A statement that the applicant is either a State agency or an agency of a unit of local government.

(2) A statement that the applicant is or will be financed in part by a tax or fee on motor vehicles registered by the State or possessed or insured within the State, and that such tax or fee is not less than $1 per vehicle.

(3) An assurance that Federal funds received under a grant under this subtitle shall be used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under the grant.

(4) A statement that the resources of the applicant will be devoted entirely to combating motor vehicle theft, including any or all of the following:

(A) Financing law enforcement officers or investigators whose duties are entirely or primarily related to investigating cases of motor vehicle theft or of trafficking in stolen motor vehicles or motor vehicle parts.

(B) Financing prosecutors whose duties are entirely or primarily related to prosecuting cases of motor vehicle theft or of trafficking in stolen motor vehicles or motor vehicle parts.

(C) Motor vehicle theft prevention programs, including vehicle identification number etching programs, programs implemented by law enforcement agencies and designed to enable the electronic tracking of stolen automobiles, and programs designed to prevent the exportation of stolen vehicles.

(5) A description of the budget for the applicant for the fiscal year for which a grant is sought.

SEC. 35. AWARD OF GRANTS.

(a) IN GENERAL.—The Director shall allocate to each State a proportion of the funds available under this subtitle for a fiscal year that is equal to the proportion of the number of motor vehicles registered in the State to the number of motor vehicles registered in all of the States.

(b) GRANT AMOUNTS.—

(1) SINGLE APPLICANT.—Subject to subsection (c), if one Anti Car Theft Committee in a State submits an application in compliance with section 34, the Director shall award to that committee a grant equal to the amount of funds allocated to the State under subsection (a).

(2) MULTIPLE APPLICANTS.—(A) Subject to subsection (c), if 2 or more Anti Car Theft Committees in a State submit applications in compliance with section 34, the Director shall award to those committees grants that in sum are equal to the amount of funds allocated to the State under subsection (a).

(B) The Director shall allocate funds among 2 or more Anti Car Theft Committees in a State according to the proportion of the preaward budget of each Anti Car Theft Committee to the total preaward budget for all grant recipient committees in the State.

(c) LIMITATION.—In no case shall an Anti Car Theft Committee receive a grant in an amount that is greater than 50 percent of the amount budgeted for the committee prior to the making of the award.

(d) RENEWAL OF GRANTS.—Subject to the availability of funds, a grant under this subtitle may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives an initial grant under this subtitle if the Director determines that the funds made available to the recipient during the previous year were used in the manner required under the approved application.

SEC. 36. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $10,000,000 for each of fiscal years 1993, 1994, and 1995.

Subtitle C—Report Regarding State Motor Vehicle Titling Programs To Combat Motor Vehicle Thefts and Fraud

SEC. 41. TASK FORCE.

(a) ESTABLISHMENT.—The Secretary of Transportation and the Attorney General,

acting jointly, shall, as soon as practicable after the date of enactment of this Act but not later than 180 days after that date, establish a task force to study problems that relate to motor vehicle titling and controls over motor vehicle salvage that may affect the motor vehicle theft problem.

(b) MEMBERSHIP.—The task force shall consist of—

(1) the Secretary of Transportation or the Secretary's delegate;

(2) the Attorney General or the Attorney General's delegate;

(3) the Secretary of Commerce or the Secretary's delegate;

(4) the Secretary of the Treasury or the Secretary's delegate;

(5) at least 3 representatives to be designated by the Attorney General;

(6) at least 5 representatives of State motor vehicle departments to be designated by the Secretary of Transportation; and

(7) at least 1 representative of each of the following groups to be designated by the Secretary of Transportation:

(A) Motor vehicle manufacturers.

(B) Motor vehicle dealers and distributors.

(C) Motor vehicle dismantlers, recyclers, and salvage dealers.

(D) Motor vehicle repair and body shop operators.

(E) Motor vehicle scrap processors.

(F) Insurers of motor vehicles.

(G) State law enforcement officials.

(H) Local law enforcement officials.

(I) The American Association of Motor Vehicle Administrators.

(J) The National Automobile Theft Bureau.

(K) The National Committee on Traffic Laws and Ordinances.

(c) REIMBURSEMENT.—

(1) SALARY.—The members of the task force shall serve without pay.

(2) TRAVEL EXPENSES.—While away from their residences or regular places of business in performance of services for the Federal Government, members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703 of title 5, United States Code.

(3) CHAIR.—The Secretary of Transportation or the Secretary's delegate shall serve as chair of the task force. The task force may also invite representatives of the Governors and State legislatures to participate.

(d) STUDY REQUIREMENTS.—The study required by subsection (a) shall—

(1) include an examination of the extent to which the absence of uniformity and integration in State laws regulating vehicle titling and registration and salvage of used vehicles allows enterprising criminals to find the weakest link to "wash" the stolen character of the vehicles; and

(2) consider the adoption of a title brand on all certificates of title indicating whether a vehicle—

(A) has previously been issued a title brand;

(B) has been rebuilt or reconstructed; or

(C) has been damaged by flood.

(e) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the task force is established, the task force shall submit to the President, the Congress, and the chief executive officer of each State a report containing the results of the study required by subsection (a).

(2) CONSULTATION AND REVIEW.—The report described in paragraph (1) shall be made after consultation with interested persons and a review of laws, practices, studies, and recommendations regarding the matters described in subsection (d).

(3) CONTENTS.—The report described in paragraph (1) shall—

(A) specify the important aspects of motor vehicle antitheft measures necessary to prevent—

(i) the disposition or use of stolen motor vehicles or the major components of motor vehicles; and

(ii) the commission of insurance and other fraud based on false reports of stolen vehicles;

(B) identify antitheft measures for which national uniformity is crucial to the effectiveness of the measure;

(C) recommend ways of obtaining any national uniformity that is necessary; and

(D) include recommendations for legislative or administrative action at the State or Federal level and for action by industry and the public to deal with the problem of motor vehicle theft.

Mr. PRESSLER. Mr. President, in Washington, DC, officials recorded four car-jackings at gunpoint during the month of May 1992 alone. In 1990, 1.6 million cars were stolen throughout the Nation. At an estimated cost of $8–$9 billion, auto theft is the No. 1 crime against personal property. Auto theft is a lucrative, professional business and a great expense to our constituents. This epidemic of crime is not geographically isolated—we are all affected.

The sophisticated alarms, steering-wheel locks, and homing devices installed by desperate auto owners as thefts rise are prompting auto thieves to devise new criminal strategies. Car-jacking has become a viable alternative for the professional car thief. Today's criminal can just point a weapon and take a car, without the hassle of breaking the windows or popping the ignition.

The alarming rise in car-jackings and auto theft has prompted me to introduce a portion of my bill, S. 2613, the Anti-Car Theft Act of 1992 as an amendment to H.R. 11. This amendment subjects car-jackers to Federal penalties. Additionally, the bill authorizes the establishment of a task force to study problems relating to motor vehicle titling and controls over motor vehicle salvage which may affect the theft problem. My amendment does not include titles II, III, or IV of S. 2613 which refer to the labeling and marking of auto parts.

Mr. President, I ask unanimous consent that a copy of the amendment I intend to offer tomorrow, together with a letter to my colleagues and a fact sheet describing the amendment, be included in the RECORD immediately following my remarks. I urge all of my colleagues to join me in cosponsoring this important amendment.

McCAIN (AND INOUYE) AMENDMENT NO. 3166

(Ordered to lie on the table.)

Mr. McCAIN (for himself and Mr. INOUYE) submitted an amendment intended to be proposed by them to the bill H.R. 11, supra, as follows:

Strike section 1106 and all that follows through the end of title I, and insert the following:

SEC. 1106. EFFECTIVE DATE.

(a) GENERAL RULE.—The amendments made by this subtitle (other than the amendments made with respect to Indian reservation tax enterprise zones) shall take effect on the date of the enactment of this Act.

(b) REQUIREMENT FOR RULES.—Not later than the date 4 months after the date of the enactment of this Act, the appropriate Secretaries shall issue rules—

(1) establishing the procedures for nominating areas for designation as tax enterprise zones,

(2) establishing a method for comparing the factors listed in section 1392(d) of the Internal Revenue Code of 1986 (as added by this subtitle),

(3) establishing recordkeeping requirements necessary or appropriate to assist the studies required by subtitle B, and

(4) providing that State and local governments shall have at least 5 months after such rules are published to file applications for nominated areas before such applications are evaluated and compared and any area designated as a tax enterprise zone.

Subtitle B—Study

SEC. 1111. STUDY OF EFFECTIVENESS OF TAX ENTERPRISE ZONE INCENTIVES.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the appropriate Secretary (as defined in section 1393(9), as added by subtitle A), shall contract within 3 months of the date of the enactment of this Act, with the National Academy of Sciences (hereafter in this section referred to as the 'Academy') to conduct a study of the effectiveness of the incentives provided by subtitle A in achieving the purposes of such subtitle in tax enterprise zones.

(b) CONDUCT OF STUDY.—If the Academy contracts for the conduct of the study described in subsection (a), the Academy shall develop a study methodology and shall oversee and manage the conduct of such study.

(c) REPORTS.—The Academy shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) not later than July 1, 1997, an interim report setting forth the findings as a result of such study, and

(2) not later than July 1, 2000, a final report setting forth the findings as a result of such study.

(d) FUNDING.—There are authorized to be appropriated to carry out the study and reports described in this section, $500,000 for fiscal year 1993, and such sums as are necessary for each succeeding fiscal year.

Subtitle C—Indian Employment and Investment

SEC. 1121. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATIONS.

(a) ALLOWANCE OF INDIAN RESERVATION CREDIT.—Section 46 (relating to investment credits) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding after paragraph (3) the following new paragraph:

"(4) the Indian reservation credit."

(b) AMOUNT OF INDIAN RESERVATION CREDIT.—

(1) IN GENERAL.—Section 48 (relating to the energy credit and the reforestation credit) is

amended by adding after subsection (b) the following new subsection:

"(c) INDIAN RESERVATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the Indian reservation credit for any taxable year is the Indian reservation percentage of the qualified investment in qualified Indian reservation property placed in service during such taxable year, determined in accordance with the following table:

"In the case of qualified Indian reservation property which is:	The Indian reservation percentage is:
Reservation personal property	10
New reservation construction property.	15
Reservation infrastructure investment.	15.

"(2) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subpart—

"(A) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(i) which is—

"(I) reservation personal property,

"(II) new reservation construction property, or

"(III) reservation infrastructure investment, and

"(ii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

The term 'qualified Indian reservation property' does not include any property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703).

"(B) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY.—The term 'qualified investment in qualified Indian reservation property' means—

"(i) in the case of reservation infrastructure investment, the amount expended by the taxpayer for the acquisition or construction of the reservation infrastructure investment; and

"(ii) in the case of all other qualified Indian reservation property, the taxpayer's basis for such property.

"(C) RESERVATION PERSONAL PROPERTY.—The term 'reservation personal property' means qualified personal property which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation. Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on any regular basis.

"(D) QUALIFIED PERSONAL PROPERTY.—The term 'qualified personal property' means property—

"(i) for which depreciation is allowable under section 168,

"(ii) which is not—

"(I) nonresidential real property,

"(II) residential rental real property, or

"(III) real property which is not described in (I) or (II) and which has a class life of more than 12.5 years.

"(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term 'new reservation construction property' means qualified real property—

"(i) which is located in an Indian reservation,

"(ii) which is used by the taxpayer within an Indian reservation predominantly in the active conduct of a trade or business, and

"(iii) which is originally placed in service by the taxpayer.

"(F) QUALIFIED REAL PROPERTY.—The term 'qualified real property' means property described in clause (I), (II), or (III) of subparagraph (D)(ii).

"(G) RESERVATION INFRASTRUCTURE INVESTMENT DEFINED.—

"(i) IN GENERAL.—The term 'reservation infrastructure investment' means qualified personal property or qualified real property which—

"(I) benefits the tribal infrastructure,

"(II) is available to the general public, and

"(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

"(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal property and qualified real property outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation, and shall include, but not be limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

"(3) REAL ESTATE RENTALS.—For purposes of this section, ownership (or leaseholding) of residential, commercial, or industrial real property within an Indian reservation for rental shall be treated as the active conduct of a trade or business in an Indian reservation.

"(4) INDIAN RESERVATION DEFINED.—For purposes of this subpart, the term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(5) LIMITATION BASED ON UNEMPLOYMENT.—

"(A) GENERAL RULE.—The Indian reservation credit allowed under section 46 for any taxable year shall equal—

"(i) if the Indian unemployment rate on the applicable Indian reservation for which the credit is sought exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years, 100 percent of such credit,

"(ii) if such Indian unemployment rate exceeds 150 percent but not 300 percent, 50 percent of such credit, and

"(iii) if such Indian unemployment rate does not exceed 150 percent, 0 percent of such credit.

"(B) SPECIAL RULE FOR LARGE PROJECTS.—In the case of a qualified Indian reservation property which has (or is a component of a project which has) a projected construction period of more than 2 years or a cost of more than $1,000,000, subparagraph (A) shall apply by substituting 'during the earlier of the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment or the first calendar year in which the taxpayer has expended at least 10 percent of the taxpayer's qualified investment, or the preceding calendar year' for 'during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years'.

"(C) DETERMINATION OF INDIAN UNEMPLOYMENT.—For purposes of this paragraph, with respect to any Indian reservation, the Indian unemployment rate shall be based upon Indians unemployed and able to work, and shall be certified by the Secretary of the Interior."

(2) LODGING TO QUALIFY.—Paragraph (2) of section 50(b) (relating to property used for lodging) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting "; and," and

(C) by adding at the end thereof the following subparagraph:

"(E) new reservation construction property."

(c) RECAPTURE.—Subsection (a) of section 50 (relating to recapture in case of dispositions, etc.), is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be investment credit property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted or otherwise ceases to be Indian reservation property,

the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the expenditures taken into account with respect to the property been limited to an amount which bears the same ratio that the property was held by the taxpayer bears to the applicable recovery period under section 168(g)."

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property) is amended by striking "energy credit or reforestation credit" and inserting "energy credit, reforestation credit or Indian reservation credit other than with respect to any expenditure for new reservation construction property".

(e) CERTAIN GOVERNMENTAL USE PROPERTY TO QUALIFY.—Paragraph (4) of section 50(b) (relating to property used by governmental units or foreign persons or entities) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and inserting after subparagraph (C) the following new subparagraph:

"(D) EXCEPTION FOR RESERVATION INFRASTRUCTURE INVESTMENT.—This paragraph shall not apply for purposes of determining the Indian reservation credit with respect to reservation infrastructure investment."

(f) CLERICAL AMENDMENTS.—

(1) The caption of section 48 is amended by deleting the period at the end thereof and adding "**; Indian Reservation Credit.**"

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 48 and inserting the following:

"Sec. 48. Energy Credit; reforestation credit; Indian reservation credit."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1992.

SEC. 1122. INDIAN EMPLOYMENT CREDIT.

(a) ALLOWANCE OF INDIAN EMPLOYMENT CREDIT.—Section 38(b) (relating to general business credits), as amended by section 1105(b), is amended by striking "plus" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", plus", and by adding after paragraph (8) the following new paragraph:

"(9) the Indian employment credit as determined under section 45(a)."

(b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—Subpart D of Part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45. INDIAN EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the Indian employment credit determined under this section with respect to any employer for any taxable year is 10 percent (30 percent in the case of an employer with at least 85 percent Indian employees) of the lesser of —

"(1) the sum of—

"(A) the qualified wages paid or incurred during such taxable year, plus

"(B) qualified employee health insurance costs paid or incurred during such taxable year; or

"(2) the credit limitation amount determined under subsection (e).

"(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—For purposes of this section—

"(1) QUALIFIED WAGES.—The term 'qualified wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

"(A) IN GENERAL.—The term 'qualified employee health insurance costs' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(c) QUALIFIED EMPLOYEE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if—

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation,

"(B) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed, and

"(C) the employee began work for such employer on or after July 1, 1992.

"(2) CREDIT ALLOWED ONLY FOR FIRST 7 YEARS.—An employee shall not be treated as a qualified employee for any period after the date 7 years after the day on which such employee first began work for the employer.

"(3) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.—An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000. The Secretary shall adjust the $30,000 amount contained in the preceding sentence for years beginning after 1991 at the same time and in the same manner as under section 415(d).

"(4) EMPLOYMENT MUST BE TRADE OR BUSINESS EMPLOYMENT.—An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (f)(2).

"(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—The term 'qualified employee' shall not include—

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

"(C) any individual who is neither an enrolled member of an Indian tribe nor the spouse of an enrolled member of an Indian tribe, and

"(D) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

"(6) INDIAN TRIBE DEFINED.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(7) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903 (10)).

"(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—

"(1) IN GENERAL.—If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

"(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

"(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55."

"(e) CREDIT LIMITATION AMOUNT.—For purposes of this section—

"(1) CREDIT LIMITATION AMOUNT DEFINED.—The credit limitation for a taxable year shall be an amount equal to the credit rate (10 or 30 percent as determined under subsection (a)) multiplied by the increased credit base.

"(2) INCREASED CREDIT BASE.—The increased credit base for a taxable year shall be the excess of—

"(A) the sum of any qualified wages and qualified employee health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (paid or incurred by the employer) during the taxable year do not exceed the amount determined under paragraph (3) of subsection (c), over

"(B) the sum of any qualified wages and qualified employee health insurance costs paid or incurred during calendar year 1991 with respect to employees whose wages (paid or incurred by the employer) during 1991 did not exceed $30,000.

"(3) SPECIAL RULE FOR SHORT TAXABLE YEARS.—For any taxable year having less than 12 months—

"(A) the amounts paid or incurred by the employer shall be annualized for purposes of determining the increased credit base, and

"(B) the credit limitation amount shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) WAGES.—The term 'wages' has the same meaning given to such term in section 51, except that paragraph (4) of section 51(c) shall not apply.

"(2) CONTROLLED GROUPS.—

"(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

"(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

"(3) CERTAIN OTHER RULES MADE APPLICABLE.—Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following:

"Sec. 45. Indian employment credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after June 30, 1992.

SEC. 1123. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Section 162 (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) CLUB MEMBERSHIP DUES.—No deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dues paid after the date of the enactment of this Act.

McCONNELL AND SEYMOUR AMENDMENTS NOS. 3167 AND 3168

Mr. McCONNELL (for himself and Mr. SEYMOUR) proposed two amendments to the bill H.R. 11, supra, as follows:

AMENDMENT NO. 3167

On page 1699, between lines 15 and 16, insert the following:

SEC. 7135. AGREEMENT TO ASSIST IN LOCATING MISSING CHILDREN UNDER THE PARENT LOCATOR SERVICE.

(a) IN GENERAL.—Section 463 of the Social Security Act (42 U.S.C. 663) is amended by adding at the end the following new subsection:

"(f) The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Parent Locator Service established under section 453 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request for the purpose of locating any parent or child on behalf of the Office of Juvenile Justice and Delinquency Prevention for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

(b) CONFORMING AMENDMENT.—Section 463(c) of such Act (42 U.S.C. 663(c)) is amended by striking "(a), (b), or (e)" and inserting "(a), (b), (e), or (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1992.

AMENDMENT NO. 3168

On page 1336, between lines 11 and 12, insert:

"(9) Any fees for professional services, and any transaction costs, incurred by parties to a reorganization with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

MURKOWSKI (AND OTHERS) AMENDMENT NO. 3169

Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. BUMPERS, Mr. BENTSEN, Mr. PACKWOOD, and Mr. COHEN) proposed an amendment to the bill H.R. 11, supra, as follows:

At the end of title VIII of the Committee amendment, insert:

SEC. . IRA ROLLOVERS OF MILITARY SEPARATION PAY.

(a) IN GENERAL.—Section 402(c) (relating to rules applicable to rollovers) is amended by adding at the end the following new paragraph:

"(11) MILITARY SEPARATION PAY.—If—

"(A) an individual receives separation pay under section 1174 or 1174a of title 10, United States Code, and

"(B) such individual transfers any portion of such pay within 60 days after the receipt of such pay to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B),

then the portion of the pay so transferred (to the extent it does not exceed $25,000) shall be treated as a transfer from a qualified trust which meets the requirements of this subsection and which is a transfer of a distribution of amounts other than employee contributions."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to pay received after December 5, 1991.

(2) TRANSITION RULE.—In the case of any payment received after December 5, 1991, and before the date of the enactment of this Act, the 60-day transfer requirement of section 402(c)(11)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall be treated as met if the taxpayers transfers the payment to an eligible retirement plan within 1 year after such date of enactment.

HARKIN AMENDMENT NO. 3170

Mr. HARKIN proposed an amendment to the bill H.R. 11, supra, as follows:

On page 1811, strike line 9 and insert the following: of the enactment of this Act.

SEC. 8217. ADVERTISING AND PROMOTIONAL EXPENSES RELATING TO TOBACCO PRODUCT USE.

(a) LIMITATION ON DEDUCTION.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280I. LIMITATION ON DEDUCTION FOR TOBACCO ADVERTISING AND PROMOTIONAL EXPENSES.

"(a) IN GENERAL.—The amount allowable as a deduction under this chapter for expenses relating to advertising or promoting tobacco products shall not exceed 80 percent of the amount of such expenses which would (but for this paragraph) be allowable as a deduction under this chapter.

"(b) DEFINITIONS.—For purposes of this section—

"(1) TOBACCO PRODUCTS.—The term 'tobacco products' means cigars, cigarettes, smokeless tobacco, pipe tobacco, or any similar tobacco product.

"(2) CIGARETTES, CIGARS, SMOKELESS TOBACCO, PIPE TOBACCO.—The terms 'cigar', 'cigarette', 'smokeless tobacco', and 'pipe tobacco' have the same meanings given to such terms by subsections (a), (b), (n) of (o) of section 5702, respectively."

(2) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following new item:

"Sec. 280I. Limitation on deduction for tobacco advertising and promotion expenses."

(b) ESTABLISHMENT OF TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9512. TRUST FUND TO REDUCE TOBACCO USE.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Trust Fund to Reduce Tobacco Use' (hereafter referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—The Secretary shall transfer to the Trust Fund an amount equivalent to the net increase in revenues received in the Treasury attributable to section 280I as added by subsection (a) of section ——of the Revenue Act of 1992, as estimated by the Secretary.

"(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, to the Secretary to distribute to each State based upon such State's population in relation to the population of all the States, as determined by using the most recent decennial census data.

"(2) USE OF DISTRIBUTIONS.—Each State, through its agency responsible for public health, may use its distribution to fund advertising programs designed to persuade individuals (especially children, pregnant women, and minorities) not to use tobacco products (as defined in section 280I(b)).

"(3) LIMITATION ON ADMINISTRATIVE COSTS.—Each State may use not more than 3 percent of the amount described in paragraph (2) for administrative expenses."

(2) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:

"Sec. 9512. Trust Fund to Reduce Tobacco Use."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply taxable years ending after December 31, 1992.

WARNER (AND METZENBAUM) AMENDMENT NO. 3171

Mr. WARNER (for himself and Mr. METZENBAUM) proposed an amendment to the bill H.R. 11, supra, as follows:

On page 1751, between lines 7 and 8, insert the following new section:

SEC. 8006. IMPROVED DISCLOSURE TO DONORS BY TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ADDITIONAL REQUIREMENT FOR TAX-EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any organization described in section 501(c)(3) or 501(c)(4) and any separate segregated fund described in section 527(f)(3) maintained by such organization, which is subject to the requirements of subsection (a) shall—

"(A) advise each contributor of the availability of a disclosure statement described in paragraph (3), and

"(B) shall furnish such statement upon written request to—

"(i) such contributor, or

"(ii) any potential contributor, within 30 days of such request.

"(2) EXCEPTION.—Paragraph (1) shall not apply to—

"(A) any organization described in clause (ii) or (iii) of section 170(b)(1)(A) or

"(B) any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(3) DISCLOSURE STATEMENT.—The disclosure statement described in this paragraph is a statement for the most recent taxable year for which a return under subsection (a) has been filed, which contains the information described in—

"(A) paragraphs (1), (2), and (3) of subsection (b), and

"(B) paragraphs (6) and (7) of subsection (b), but only with respect to—

"(i) the 5 highest compensated individuals of the organization for such taxable year, and

"(ii) any other individual whose total compensation and other payments from such organization for such taxable year exceeds $100,000.

"(4) PROCESSING FEES.—Any organization furnishing a disclosure statement under this subsection may require that a self-addressed, stamped envelope and a reasonable fee not to exceed $2 to cover the actual costs of copying and mailing such statement be included in the written request for such statement."

(b) PENALTY FOR FAILURE TO MEET REQUIREMENTS.—Paragraph (1) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(E) DISCLOSURE STATEMENT.—In the case of a failure to comply with the requirements of section 6033(e)(1) (relating to disclosure statements provided upon request), there shall be paid by the person failing to meet such requirements $50 for each day during which such failure continues."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

McCAIN AMENDMENT NO. 3172

Mr. McCAIN proposed an amendment to the bill H.R. 11, supra, as follows:

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

SEC. . TAX FAIRNESS AND ACCOUNTABILITY.

(a) SUPERMAJORITY REQUIREMENT IN THE SENATE.—

In the Senate, any bill or amendment increasing the tax rate, the tax base, the amount of income subject to tax; or decreasing a deduction, exclusion, exemption, or credit; or any amendment of this provision shall be considered and approved only by an affirmative vote by three-fifths of the Members of the Senate, duly chosen and sworn.

(b) AMENDMENT TO THE CONGRESSIONAL BUDGET ACT OF 1974 STRIKING 60-VOTE REQUIREMENT FOR REVENUE REDUCTION.—Section 311(a) of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following: "Notwithstanding any other provision of this Act or any other law, a bill, resolution, or amendment that reduces the tax rate, the tax base, the amount of income subject to tax; or increases a deduction, exclusion, or credit shall be considered and approved by a simple majority of the Senate; *Provided however*, That a bill, resolution or amendment that reduces the tax for Social Security may only be considered and approved by an affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn.

ADAMS AMENDMENT NO. 3173

Mr. ADAMS proposed an amendment to the bill H.R. 11, supra, as follows:

At the end of title VIII, insert the following new sections:

SEC. 8217. DENIAL OF CERTAIN EXPORT SUBSIDIES.

(a) FOREIGN SALES CORPORATIONS.—Paragraph (2) of section 927(a) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end thereof the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(b) DOMESTIC INTERNATIONAL SALES CORPORATIONS.—Paragraph (2) of section 993(c) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding after subparagraph (D) the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(c) TITLE-PASSAGE RULE.—Subsection (b) of section 865 (relating to source rules for personal property sales) is amended by adding at the end the following:

"Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

(d) ELIMINATION OF DEFERRAL.—Subsection (d) of section 954 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) the sale of any unprocessed timber referred to in section 865(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

SEC. 8218. RURAL DEVELOPMENT IN RURAL COMMUNITIES.

(a) PURPOSES.—The purposes of this section are—

(1) to create an organizational structure to plan rural development programs for economic diversification, stability, and rural development for rural communities that have been adversely affected by a declining timber supply and changes in the timber industry in Oregon, Washington, and northern California; and

(2) to provide rural development programs for small businesses and microbusinesses adversely affected by changes in the timber industry.

(b) DEFINITIONS.—As used in this section:

(1) ADVERSELY AFFECTED.—The term "adversely affected", with respect to a community or a business situated near or adjacent to a Federal forest, means adversely economically affected by changes in the timber industry.

(2) AFFECTED STATE.—The term "affected State" means Oregon, Washington, or California.

(3) COMMISSION.—The term "Commission" means a Community Rural Development Commission established by subsection (d).

(4) COMMUNITY.—The term "community" means a rural community that—

(A) is adjacent to or near a Federal forest; and

(B) has been adversely affected.

(5) DISLOCATED WORKER.—The term "dislocated worker"—

(A) means an individual—

(i) who is employed, or who was employed, in the timber harvesting, log hauling and transportation, saw mill, or secondary manufacturing of wood products industries that are dependent on timber from Federal forests in Oregon, Washington, or northern California;

(ii) who is experiencing dislocation from the individual's employing industry; and

(iii) who has exhausted unemployment benefits available under State law; and

(B) does not include an individual who is engaged in an occupation that is not directly related to the timber harvesting or wood products industries.

(6) DISLOCATION.—The term "dislocation" means a dislocated worker's total or partial loss of employment (including being compelled to accept a position with lesser pay or to work part-time) during the period beginning 2 years before, and ending 3 years after, the date of enactment of this Act because of an action that is taken pursuant to—

(A) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

(B) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); or

(C) the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).

(7) EMPLOYMENT.—The term "employment" means the worker's period of employment in the timber harvesting, log hauling and transportation, saw mill, or secondary manufacturing of wood products industries in Oregon, Washington, or northern California in each of the 3 base periods (as determined under State law) preceding the total or partial dislocation that constitutes—

(A) at least 39 weeks of employment (at 20 hours or more of employment per week); or

(B) not fewer than 1560 hours of employment, as determined under the unemployment laws of the worker's State of residence.

(8) FEDERAL FOREST.—The term "Federal forest" means land in Federal ownership that is managed—

(A) by the Forest Service and is located—

(i) within the exterior boundaries of a national forest in the State of Washington or the State of Oregon; or

(ii) in one of the following national forests (or portions of forests) in the State of California: Siskiyou, Rogue River, Klamath, Six Rivers, Shasta-Trinity, and Mendocino National Forests, or that portion of the Modoc National Forest inhabited by northern spotted owls; or

(B) by the Bureau of Land Management and is located in—

(i) the State of Washington;

(ii) the State of Oregon; or

(iii) the Ukiah District in the State of California.

(9) FUND.—The term "Fund" means the Community Rural Development Investment Fund established by subsection (c).

(10) STATE LAW.—The term "State law" means the unemployment compensation laws of the worker's State of residence.

(c) COMMUNITY RURAL DEVELOPMENT INVESTMENT FUND.—

(1) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Community Rural Development Investment Fund", consisting of such amounts as are transferred to the Fund under paragraph (2).

(2) TRANSFERS TO FUND.—For each of fiscal years 1993 through 1998, the Secretary of the Treasury shall transfer to the Fund by not later than the last day of the fiscal year an amount equal to 40 percent of the increase in Federal revenues for the fiscal year by reason of the amendments made by section 8217.

(3) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—On October 1, 1993, and each October 1 thereafter through October 1, 1998, and without further appropriation, the Secretary of the Treasury shall transfer from the Fund to each Commission the amount from the Fund that is determined to be payable to the Commission pursuant to subparagraph (B). The amount shall be used by the Commission in accordance with subparagraph (C).

(B) DETERMINATION OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of Agriculture shall determine the amounts payable to each Commission according to a pro rata distribution based on a formula determined by the Secretary in accordance with clause (ii).

(ii) FORMULA.—The formula shall take into consideration, on a historical basis, the number of dislocated workers in the State in proportion to the total number of jobs lost in each industry in which dislocated workers are employed.

(C) USE OF AMOUNTS.—

(i) IN GENERAL.—Subject to clause (ii), a Commission shall use amounts received pursuant to subparagraph (A) to achieve rural development by—

(I) making loans pursuant to subsection (e); and

(II) facilitating the operations of the Commission.

(ii) ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the funds made available to a Commission may be used for administrative expenses.

(4) TERMINATION.—The Fund shall terminate on October 1, 1998. After termination, any amounts remaining in the Fund shall be paid to the general fund of the Treasury.

(d) COMMUNITY RURAL DEVELOPMENT COMMISSIONS.—

(1) IN GENERAL.—There is established for each affected State a Community Rural Development Commission.

(2) MEMBERSHIP.—

(A) COMPOSITION.—Each Commission shall be composed of five members appointed by the Governor of the affected State.

(B) CHAIRPERSON.—

(i) IN GENERAL.—Each Commission shall elect a chairperson from among its members.

(ii) TERM.—The chairperson shall serve for a term of 1 year.

(C) VACANCIES.—A vacancy on a Commission shall be filled in the same manner in which the original appointment was made.

(D) COMPENSATION.—Members of a Commission shall serve without compensation.

(E) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for a Commission, members of a Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses pursuant to section 5703 of title 5, United States Code.

(3) DUTY.—In accordance with subsection (e), each Commission shall distribute loans and other assistance to communities from monies received from the Fund.

(4) MEETINGS.—

(A) IN GENERAL.—A Commission meeting shall be open to the public, unless the meeting concerns a personnel or budgetary matter.

(B) NOTICE.—A notice of a Commission meeting shall be published 30 days in advance in a newspaper of general circulation in the State.

(C) RULES OF PROCEDURE.—Each Commission shall adopt and make available to the public such internal rules of procedure as the Commission considers necessary.

(5) STAFF.—Each Commission may appoint, fix compensation for, and assign and delegate duties to an executive director and such other employees, and procure such temporary and intermittent services, as the Commission considers necessary to carry out its duties.

(6) ASSISTANCE FROM OTHER AGENCIES.—

(A) IN GENERAL.—Each Commission may use, with the consent of the agency, the services, equipment, personnel, and facilities of Federal, State, and other agencies with or without reimbursement.

(B) TECHNICAL ASSISTANCE.—Upon the request of a Commission, a Federal agency may provide technical assistance on a nonreimbursable basis to the Commission to assist the Commission in carrying out its duties.

(C) COOPERATION.—Subject to subparagraph (B), each Federal agency shall cooperate fully in making its services, equipment, personnel, and facilities available to each Commission.

(7) REPORT.—Not later than 90 days after the end of each fiscal year during which a Commission is in existence, the Commission shall submit in writing to Congress, the Secretary of Agriculture, the Secretary of the Interior, and the Governor of the State, a report that addresses—

(A) the activities of the Commission;

(B) the economic conditions and the employment situation of communities in the State;

(C) any recommendations that the Commission may have concerning the economic conditions; and

(D) any other rural development issues considered appropriate by the Commission.

(8) TERMINATION.—Each Commission shall terminate on September 30, 1999.

(e) COMMUNITY RURAL DEVELOPMENT LOANS.—

(1) IN GENERAL.—For the purposes described in paragraph (2), each Commission shall distribute monies received from the Fund in the form of loans to communities that are eligible in accordance with paragraph (3).

(2) PURPOSES.—To further the purposes of rural development, loans shall be provided to—

(A) assist eligible communities and businesses in achieving economic diversity; and

(B) carry out such other purposes as the Commission considers appropriate.

(3) ELIGIBILITY.—A community shall be eligible for a loan if the community—

(A) has associated with it employment in a wood products, log harvesting, or log hauling or transportation company that during the period beginning 2 years before, and ending 3 years after, the date of enactment of this Act has experienced a plant closure or reduction in its work force of at least 33 percent; and

(B) is approved for assistance by the Commission for the State.

(4) REVOLVING LOAN FUND.—

(A) IN GENERAL.—Each Commission shall establish a revolving loan fund from the monies made available to the Commission for the purpose of making low interest loans to businesses that—

(i) have been adversely affected; and

(ii) have 300 or fewer employees.

(B) PROMOTION OF NEW BUSINESSES.—A Commission may set aside a portion of the funds made available to carry out this paragraph for loans to promote new businesses in communities.

(5) ELIGIBILITY FOR OTHER ASSISTANCE.—Nothing in this subsection is intended to affect the eligibility of communities for technical planning assistance and loans intended to achieve economic diversification and enhance local economies under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6611 et seq.).

(f) PROVISION OF INFORMATION TO COMMISSIONS.—Prior to taking any action with respect to managing a Federal forest within an affected State that may have a substantial local or regional impact on employment in communities, the Secretary of Agriculture and the Secretary of the Interior shall inform the Commission for the State of the proposed action.

SIMON (AND CONRAD) AMENDMENT NO. 3174

Mr. SIMON (for himself and Mr. CONRAD) proposed an amendment to the bill H.R. 11, supra, as follows:

On page 1329, lines 2 and 3, strike "GOODWILL AND CERTAIN OTHER" and insert "CERTAIN".

On page 1329, lines 8 and 9, strike "GOODWILL AND CERTAIN OTHER" and insert "CERTAIN".

On page 1329, line 15, strike "16-year period" and insert "14-year period".

On page 1330, lines 10 and 11, strike "subparagraph (D), (E), or (F)" and insert "subparagraph (B), (C), or (D)".

On page 1330, strike line 24.

On page 1331, strike line 1.

On page 1331, line 2, strike "(C)" and insert "(A)".

On page 1331, line 14, strike "any customer-based intangible" and insert "any customer list".

On page 1331, line 18, strike "(D)" and insert "(B)".

On page 1331, line 21, strike "(E)" and insert "(C)".

On page 1332, strike lines 3 and 4, and insert: "(D) any franchise.

On page 1332, strike lines 5 through 18, and insert:

"(2) CUSTOMER LIST.—The term 'customer list' includes any subscription list".

On page 1334, line 24, strike "16 years" and insert "14 years".

On page 1335, lines 9 and 10, strike "except as provided in subsection (d)(2)(B),".

On page 1338 line 1, strike "(d)(1)(E)" and insert "(d)(1)(C)".

On page 1338, line 8, strike ", trademark, or trade name".

On page 1338, line 10, strike "(d)(1)(D)" and insert "(d)(1)(B)".

On page 1340, lines 3 and 4, strike "which is described in subparagraph (A) or (B) of subsection (d)(1) (or".

On page 1340, line 7, strike the parenthesis after "section".

On page 1350, beginning with line 22, strike through page 1351, line 3, and insert:

(1) Paragraph (1) of section 1060(b) is amended by inserting "or section 197 intangibles" before the end period.

(2) Paragraph (1) of section 1060(d) is amended by inserting ", including section 197 intangibles" after "similar items".

On page 1351, in the matter between lines 7 and 8, strike "goodwill and certain other" and insert "certain".

On page 1351, in the matter following line 21, strike "goodwill and certain other" and insert "certain".

REVISION OF PAY AUTHORITIES FOR NURSES AND OTHER VETERANS ADMINISTRATION HEALTH CARE PROFESSIONALS

CRANSTON AMENDMENT NO. 3175

(Ordered to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill (S. 2575) to amend chapter 74 of title 38, United States Code, to revise certain pay authorities that apply to nurses and other health care professionals, and for other purposes, as follows:

On page —, below line —, add the following:

SEC. 706. MEDICAL CARE COST RECOVERY.

(a) RECOVERY OF CARE FURNISHED CHAMPVA BENEFICIARIES.—(1) Section 1729 is amended—

(A) by striking out "veteran" and "veteran's" each place they appear and inserting in lieu thereof "VA beneficiary" and VA beneficiary's", respectively;

(C) by striking out "veterans" in subsection (h)(1)(B) and inserting in lieu thereof "VA beneficiary"; and

(C) by adding at the end of subsection (i) the following new paragraph:

"(4) The term 'VA beneficiary' means a veteran or a person eligible for care under section 1713 of this title.".

(2) The amendments made by paragraph (1) shall apply with respect to care and services furnished under section 1713 of title 38, United States Code, after the date of the enactment of this Act.

(b) INCLUSION OF MEDICARE SUPPLEMENTAL INSURANCE IN CLASS OF THIRD-PARTY PAYORS.—(1) Subsection (i)(1)(A) of section 1729 is amended by inserting ", including a medicare supplemental insurance policy," after "arrangement".

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) COST RECOVERY FROM ISSUERS OF MEDICARE SUPPLEMENTAL INSURANCE.—(1) Subsection (c) of section 1729 is amended by adding at the end the following new paragraph:

"(3)A) The Secretary shall collect or recover the cost of care or services furnished to VA beneficiaries under subsection (a)(1) from third party issuers of medicare supplemental insurance policies to such VA beneficiaries in accordance with the provisions of this paragraph.

"(B) The Secretary, in consultation with the Secretary of Health and Human Services, shall establish procedures for the treatment of claims of the Department for the recovery of the cost of care or services under this paragraph.

"(C) In establishing procedures under subparagraph (B), the Secretary shall provide for—

"(i) the review of such claims by an entity or entities jointly designated by the Secretary and the Secretary of Health and Human Services, for the purpose of determining the extent, if any, to which the cost of such care or services would be covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) if provided by a participating provider; and

"(ii) the transmittal to third party issuers of the results of such reviews and any additional information that may be necessary to determine the liability of such third party issuers for the cost of the care or services.

"(D) The results and information referred to in subparagraph (C)(ii) shall be transmitted to issuers of medicare supplemental insurance policies not later than the later of—

"(i) the expiration of the period provided for under title XVIII of such Act for the timely filing of claims; or

"(ii) the expiration of the period provided for in the medicare supplemental insurance policy for such filing.

"(E) The Secretary of Health and Human Services shall establish a fee for each claim reviewed by the entity or entities designated under subparagraph (C)(i) under the procedures established under that subparagraph. The amount of the fee (i) shall reflect the estimated cost of processing the claim for which the fee is collected, (ii) shall be paid to the entities designated under subparagraph (C)(i), and (iii) shall reduce the amount recovered by the Secretary of Veterans Affairs under this paragraph.".

(2) The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and apply to the recovery of costs for care and services furnished after that date.

• Mr. CRANSTON. Mr. President, I am today submitting an amendment that I intend to offer to S. 2575, the proposed Veterans Health Programs Improvement Act of 1992, when that measure comes before the Senate in the next few days. This amendment would prospectively provide VA with explicit authority to collect third-party reimbursement under Medicare supplemental insurance policies—known as Medigap policies.

Section 1729 of title 38, United States Code—which was enacted in April 1986 in the Consolidated Omnibus Budget Reconciliation Act of 1985 and amended in the Omnibus Budget Reconciliation Act of 1990 [OBRA 1990]—authorizes VA to collect from third-party payors, other than Medicare and Medicaid, the reasonable costs of care furnished by VA to eligible veterans for non-service connected conditions.

Mr. President, while a few Medigap carriers have paid VA for care furnished to veterans, others have disputed VA's billing under this authority. In practice, the Medigap policies do not cover care but rather the deductibles and copayments that Medicare imposes. The carriers argue, in part, that the authority does not apply to Medigap policies because these policies are supplementary to Medicare and, since Medicare is excluded from VA's collection efforts, these policies should also be excluded. Three federal district courts, in Alabama, Maryland, and Pennsylvania, have ruled in cases in which VA has pursued collections from Medigap carriers that current law does cover Medigap policies. The insurers are appealing those decisions. This amendment is not intended to have any effect on those or any other cases relating to claims for reimbursement for care furnished by VA before the date of enactment.

SUMMARY OF PROVISIONS

Mr. President, the proposed amendment would:

First, prospectively expressly include Medicare supplemental insurance carriers in the class of third-party payors from whom VA can collect reimbursement for care provided to beneficiaries of those policies.

Second, require the Secretary, in consultation with the Secretary of Health and Human Services, to establish procedures for the treatment of claims involving Medigap policies, including the review of such claims by an entity or entities jointly designated by the Secretaries of Veterans Affairs and Health and Human Services, to determine the extent to which the cost of such care or services would be covered under the Medicare Program if furnished by a Medicare-participating facility, thereby making it possible to ascertain the amount for which the insurers would be liable.

Third, provide for the collection of a fee for each VA claim reviewed that would reflect the estimated cost of processing the claim.

Fourth, provide that the provisions of this amendment would apply with respect to the recovery of costs for care and services furnished after the date of enactment.

Fifth, replace the term "veteran" with "VA beneficiary" throughout section 1729, relating to VA's Medical Care Cost Recovery program, so as to authorize VA to collect from third-party payors the costs of care furnished to any VA beneficiary, which would include a veteran's dependent furnished care in a VA facility under section 1713.

VA'S MEDICAL CARE COST RECOVERY PROGRAM

Mr. President, prior to the 1986 amendment that authorized VA to collect generally from third-party payors, VA had a rudimentary billing process which was used to collect for VA-provided care in relation to such categories as automobile no-fault insurance and workers' compensation. When the authority was expanded in 1986, OMB estimated collections of $250 million in fiscal year 1987. Actual collections that year were $24 million.

In an April 1990 GAO report—"VA Health Care: Better Procedures Needed to Maximize Collections From Health Insurers"—GAO estimated that VA was collecting only approximately one-third of the potential collectibles from insurers under its authority. GAO pointed out that, since all collections were required to be deposited in the

U.S. Treasury, there was no incentive for VA or individual medical centers to increase collections, especially since the costs of collection came out of medical centers' budgets.

To rectify what was actually a disincentive to VA collection efforts, section 8011 of OBRA 1990 established the Medical Care Recovery Fund to which collections under section 1729 of title 38 would be credited. Annually, after deducting the amount the Secretary determines is necessary to defray the costs of operating the collections program, the Secretary of VA is required to deposit the fund balance into the U.S. Treasury as miscellaneous receipts. According to an August 4, 1992, report, VA estimated that it will collect $400 million in fiscal year 1992.

MEDIGAP COLLECTIONS

Mr. President, as I have indicated, the issue whether VA has the authority to bill Medigap carriers for care given by VA to veterans who are covered by Medigap policies has remained in dispute since 1986.

Part of the Medigap insurers' opposition to such coverage is based on their position that Medigap policies are organized differently than other health insurance policies. As their name suggests, Medicare supplemental insurance policies serve to cover the deductibles and copayments that Medicare beneficiaries are charged for Medicare-covered services—rather than generally cover the beneficiary's healthcare costs as conventional health-insurance policies do.

As of September 1, 1992, Medigap policies must conform to 1 of 10 standardized plans, all of which must include a core benefit package including the daily copayments charged for lengths of stay over 60 days—$163 for the 61st through the 90th day in 1992; payments for Medicare's 60 lifetime reserve days—$326 per day in 1992; 100 percent of Medicare part A eligible expenses after all Medicare hospital benefits have been exhausted; the reasonable costs of the first three pints of blood per calendar year; and 20 percent of the coinsurance amount for part B services after the $100 annual deductible. Nine of the 10 standard Medigap policies include coverage of the part A inpatient hospital deductible, which for 1992 is $652 per Medicare benefit period. Other plans may include varying amounts of coverage for certain foreign travel emergencies, at-home recovery, skilled nursing facility coinsurance, preventive medical care, and prescription drugs.

Mr. President, the provision that I am submitting today would provide explicitly for VA recovery from Medigap carriers. To facilitate the resulting billing effort, the provision would direct VA to arrange for billing review according to Medicare standards through an entity or entities chosen jointly by the Secretaries of Veterans Affairs and Health and Human Services. These reviewing entities might well be intermediaries with HHS contracts for its reviews of Medicare claims.

A fee payable to the reviewing entity, perhaps the Medicare intermediaries with whom HHS contracts for its reviews of Medicare claims, based on the cost of the billing-review process, would be deducted from the amount of the claim paid by the Medigap insurer. This arrangement would allow an intermediary to interpret VA's bill, determine for what services Medicare would have reimbursed if the VA medical center had been a Medicare-participating provider, and submit that determination to the Medigap carrier. HCFA and the current Medicare intermediaries have the expertise and procedures to do such claim processing, but this provision would not mandate that the Secretaries choose them as the conduit for these bills.

Mr. President, I want to make one point clear: by submitting VA bills to a review that would determine what Medicare would have paid had these been Medicare claims, this provision would not place VA's medical care decisions under the jurisdiction of the Medicare program. VA is responsible for the quality of the care furnished in VA facilities. VA's standard for quality of care are comparable to those required by the Medicare program. But they are administered through different channels. The provision that I am proposing would not change that. The claims-review process would determine whether VA should be reimbursed and, if so, provide a basis for determining in what amounts. It would not have the responsibility or authority to direct or indicate what care VA should provide. I have consulted with insurers and VA regarding this approach—and all agree that it is a feasible and efficient one.

Mr. President, the mechanisms I have proposed would facilitate fair review of the claims of Medigap policy-covered veterans who receive care in VA facilities. I urge my colleagues to support this amendment.●

TAX ENTERPRISE ZONES ACT

STEVENS (AND MURKOWSKI) AMENDMENT NO. 3176

Mr. STEVENS (for himself and Mr. MURKOWSKI) proposed an amendment to the bill H.R. 11, supra, as follows:

At the appropriate place in the "Tax Simplification" title of this bill, add the following new section:

SEC. . STANDING FOR CERTAIN TAXPAYERS WITH REGARD TO SALE OF NET OPERATING LOSSES.

(a) Subsection (c) of section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) is amended to read as follows:

"(c) SPECIAL ADMINISTRATIVE RULES.—

"(1) INCOME INCLUDED IN NATIVE CORPORATION RETURN.—At the joint election of a Native Corporation and a corporation (referred to in this subsection (c) as the "buyer corporation") with which the Native Corporation entered into a transaction permitted under section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 (referred to in this subsection (c) as a "Native Corporation transaction"), income assigned, transferred or otherwise made available by the buyer corporation through the use of a corporation (referred to in this subsection (c) as the "profit subsidiary") by reason of such transaction for a period in which the profit subsidiary qualified as a member of the affiliated group of which the Native Corporation was the common parent shall be included in the taxable income of the Native Corporation affiliated group solely for purposes of section 6212 of the Internal Revenue Code.

"(A) ELECTION.—The election under this subsection (c) for the taxable year to which the election relates shall be made no later than 120 days after the date of enactment of this amendment. The election shall be made by filing with the district director for the Anchorage district office of the Internal Revenue Service a written statement signed by responsible officers of the Native Corporation and the electing buyer corporation that:

"(i) identifies the Native Corporation, the profit subsidiary, and the buyer corporation (and their taxpayer identification numbers) and states their agreement to make the election provided in this subsection (c);

"(ii) states the amount of income assigned, transferred or otherwise made available to the profit subsidiary for the taxable year by reason of the Native Corporation transaction;

"(iii) if profit subsidiaries related to a buyer corporation other than the electing buyer corporation were members of the affiliated group of which the Native Corporation was the common parent, describes the order and the amount of the losses and credits of the Native Corporation affiliated group that were used to offset the income of each profit subsidiary;

"(iv) states the agreement of the buyer corporation to consent under section 6501(c)(4) of the Internal Revenue Code to extend the periods of limitations for assessment and collection solely with respect to the income of the profit subsidiary for the affected taxable period(s) to a date not less than 180 days after the date the tax liability for the taxable year in which the Native Corporation transaction occurred is finally determined; and

"(v) the Native Corporation and the buyer corporation agree that the Service is authorized to make any refund of any overpayment that is determined to be due, jointly to the Native Corporation and the electing buyer corporation.

If a Native Corporation has engaged in multiple Native Corporation transactions, such election shall be independently made by each buyer corporation on separate written statements. A buyer corporation that elects under this provision must so elect for all Native Corporation transactions with the particular Native Corporation with whom the election is made for which the statute of limitations for assessment is open.

"(B) TAXABLE RATE.—Notwithstanding section 11 of the Internal Revenue Code, any income of the profit subsidiary that is subject to the election provided in this subsection (c) shall be taxed at the rate that such in-

come would have been taxed if it had been included in the return of the buyer corporation for the taxable year from which such income was assigned, transferred or otherwise made available. Solely for purposes of issuing a notice under section 6212 of the Internal Revenue Code to a Native Corporation for a Native Corporation transaction for which an election has been made under this subsection (c), the tax may be computed by applying the maximum corporate rate under section 11 of the Internal Revenue Code.

"(2) TREATMENT OF NATIVE CORPORATION AS COMMON PARENT AS SOLE AGENT.—The common parent of an affiliated group which includes a Native Corporation that elects under subsection (c)(1) shall be the sole agent for the profit subsidiary for purposes of the Native Corporation transaction for the period of affiliation.

"(3) COLLECTION OF TAX FROM BUYER CORPORATION.—For purposes of this subsection, the amount of any tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary shall be paid by and be collectable from the profit subsidiary and the buyer corporation for the taxable year for which income was assigned, transferred or otherwise made available by the buyer corporation in connection with the Native Corporation transaction.

"(4) PAYMENT OF TAX BY NATIVE CORPORATION.—If, after the election provided in subsection (c)(1) is made, the Native Corporation pays all or any part of the tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary, such payment shall be deemed to be a payment by the buyer corporation for the taxable year for which such income would otherwise have been included in the buyer corporation's return if the election provided in subsection (c)(1) was not made.

"(A) FILING OF REFUND CLAIM.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of sections 6402 and 6511 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attributable to the income of the profit subsidiary and shall be entitled to file a claim for refund as the taxpayer with respect to any taxes, interest, additions to tax, penalties or other amounts attributable to the income of the profit subsidiary.

"(B) FILING OF REFUND SUIT.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of section 7422 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attributable to the income of the profit subsidiary, and as the plaintiff for purposes of 28 U.S.C. section 1402, and shall be entitled to file and maintain a proceeding in court as the taxpayer for the recovery of such amounts.

"(C) REFUND OF OVERPAYMENT.—In the event that an overpayment is determined to be due, whether by final administrative or judicial decision, with respect to a Native Corporation transaction for which an election is made under subsection (c)(1), the Native Corporation shall be treated as the person who made the overpayment within the meaning of section 6402(a) of the Internal Revenue Code. Notwithstanding any law or rule of law, including the preceding sentence, any refund of such overpayment may be made jointly to the Native Corporation and to the electing buyer corporation, as agreed to under paragraph (A)(v) of subsection (c)(1).

"(5) PARTICIPATORY RIGHTS OF ELECTING BUYER CORPORATION.—Any buyer corporation that makes an election under subsection (c)(1) shall have the right to—

"(A) submit a written statement and participate with the Native Corporation in any administrative proceeding relating to any proposed adjustment regarding a Native Corporation transaction for which an election has been made; and

"(B) file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the Native Corporation involving a proposed adjustment regarding such a Native Corporation transaction.

All written notices or other reports issued by the Secretary or his delegate with respect to such a Native Corporation transaction shall be issued to the Native Corporation, and it shall be the obligation of the Native Corporation to provide copies thereof to the electing buyer corporation.

"(6) FINAL DETERMINATION OF ISSUES.—All issues with respect to the Native Corporation transaction with respect to which an election is made under subsection (c)(1), including the applicability of any interest, addition to tax, penalty or other amount, shall be determined by administrative or judicial decision with respect to the consolidated return of the Native Corporation affiliated group.

"(A) Upon such determination, any income of the profit subsidiary that is not offset in the Native Corporation transaction shall be reported on the buyer corporation's return as if it were originally reported thereon and subject to all adjustments, including net operating loss or other carrybacks, to which such income would otherwise be subject.

"(7) NO EFFECT ON NONELECTING CORPORATIONS.—The absence of an election by a Native Corporation and a buyer corporation with respect to a Native Corporation transaction shall not restrict the authority of the Secretary of the Treasury or his delegate to settle or litigate with any nonelecting buyer corporation with respect to any issue relating to such a transaction.

"(A) RIGHTS OF NATIVE CORPORATION.—For any such Native Corporation transaction for which no election is made under subsection (c)(1), the Native Corporation shall have the right to submit a written statement and participate with the buyer corporation in any administrative proceeding relating to any proposed adjustment regarding such Native Corporation transaction; and to file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the non-electing buyer corporation involving a proposed adjustment regarding such Native Corporation transaction.

"(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitations is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

"(C) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provision of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any non-electing buyer corporation.

"(8) EFFECTIVE DATE.—This provision shall be effective for all taxable years for which the statue of limitations for assessment with respect to an electing Native Corporation has not expired prior to the date of enactment of this Act.

"(A) EXTENSION OF STATUTE OF LIMITATIONS.—Any Native Corporation for which the statute of limitations for assessment will expire within 120 days after the date of enactment of this amendment shall have the right upon request to extend such statute of limitations pursuant to section 6501(c)(4) of the Internal Revenue Code to a date not less than 120 days after the date of enactment of this amendment."

(b) Section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) is amended by adding, after subsection (e), new subsection (f) to read as follows:

"(f) INCREASE IN UNDERPAYMENT RATE.—For purposes of determining the amount of interest payable under section 6601 of the Internal Revenue Code on a tax underpayment attributable to a Native Corporation transaction for which an election has been made under subsection (c) hereof, paragraph (2) of section 6621(a) of the Internal Revenue Code shall be applied by substituting "3.50 percentage points" for "3 percentage points"."

JEFFORDS (AND DURENBERGER) AMENDMENT NO. 3177

Mr. JEFFORDS (for himself and Mr. DURENBERGER) proposed an amendment to the bill H.R. 11, supra, as follows:

At the end of subtitle B of title IV of the Committee amendment, insert:

SEC. . REQUIRED SECURITY FOR CERTAIN PLAN AMENDMENTS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) INCREASE IN REQUIRED FUNDING PERCENTAGE.—

(A) IN GENERAL.—Clause (ii) of section 401(a)(29)(A) is amended by striking "60 percent" and inserting "90 percent".

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 401(a)(29) is amended by striking "60 percent" and inserting "90 percent".

(2) INCREASE IN REQUIRED AMOUNT OF SECURITY.—

(A) IN GENERAL.—Subparagraph (C) of section 401(a)(29) is amended to read as follows:

"(C) AMOUNT OF SECURITY.—The security shall be an amount equal to the excess of—

"(i) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 90 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, over

"(ii) $1,000,000.".

(B) CONFORMING AMENDMENT.—Subparagraph (E) of section 401(a)(29) is amended by striking ", except that" and all that follows and inserting a period.

(3) PROVISIONS MADE APPLICABLE TO MULTIEMPLOYER PLANS.—Clause (i) of section 401(a)(29)(A) is amended by striking "(other than a multiemployer plan)".

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974—

(1) INCREASE IN REQUIRED FUNDING PERCENTAGE—

(A) IN GENERAL.—Paragraph (2) of section 307(a) of the Employee Retirement Income Security Act of 1974 is amended by striking "60 percent" and inserting "90 percent".

(B) CONFORMING AMENDMENT.—Subsection (d) of section 302 of such Act is amended by striking "60 percent" and inserting "90 percent".

(2) INCREASE IN AMOUNT OF REQUIRED SECURITY.—

(A) IN GENERAL.—Subsection (c) of section 307 of such Act is amended to read as follows:

"(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess (if any) of—

"(1) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 90 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, over

"(2) $1,000,000."

(B) CONFORMING AMENDMENT.—Subsection (f) of section 307 of such Act is amended by striking ", except that" and all that follows and inserting a period.

(3) PROVISIONS MADE APPLICABLE TO MULTIEMPLOYER PLANS.—Paragraph (1) of section 307(a) of such Act is amended by striking "(other than a multiemployer plan)".

(4) CRIMINAL PENALTY MADE APPLICABLE.—Section 501 of such Act is amended by inserting "or of section 307" after "this subtitle".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan amendments adopted after 1993.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, September 24, 1992, at 9:30 a.m. to hold a hearing on the nomination of Timothy K. Lewis to be U.S. circuit judge for the third circuit, Ursula Ungaro to be U.S. district judge for the Southern District of Florida, John W. Sedwick to be U.S. district judge for the District of Alaska, John S. Unpingco to be U.S. district judge for the District of Guam, Kathryn Vratil to be U.S. district judge for the District of Kansas, Steven J. McAuliffe to be U.S. district judge for the District of New Hampshire, Paul J. Barbadoro to be U.S. district judge for the District of New Hampshire.

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

SPECIAL COMMITTEE ON AGING

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Thursday, September 24, 1992, at 10 a.m. to hold a hearing entitled "Consumer Fraud and the Elderly: Easy Prey"?

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 24, 1992, at 10 a.m. to hold a hearing on ambassadorial nominees. Nominees follow:

Mr. David J. Dunford, of Arizona, to be Ambassador to the Sultanate of Oman.

Mr. John Cameron Monjo, of Maryland, to be Ambassador to the Islamic Republic of Pakistan.

Mr. William Arthur Rugh, of Maryland, to be Ambassador to the United Arab Emirates.

Mr. John Frank Bookout, Jr., of Texas, to be Ambassador to the Kingdom of Saudi Arabia.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 24, 1992, at 2:15 p.m. to hold a hearing on arming the U.N. Security Council: The "Collective Security Participation Resolution"—Senate Joint Resolution 325.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, September 24, 1992, to hold a hearing on oversight of the insurance industry: Blue Cross/Blue Shield-Maryland plan.

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

SELECT COMMITTEE ON POW/MIA

Mr. BENTSEN. Mr. President, I ask unanimous consent for the Senate Select Committee on POW/MIA Affairs to meet Thursday, September 24, 1992, at 9:30 a.m. in room 216 of the Hart Senate Office Building for hearings to examine the Paris Peace Accords: The negotiations and the aftermath.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Thursday, September 24, at 9:15 a.m. for a hearing on the subject: Reforming Postal Procurement and Contracting: Eagle Air Hub Example.

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

COMMITTEE ON SMALL BUSINESS

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Thursday, September 24, 1992, at 2:30 p.m. The committee will hold a full committee markup of S. 2941, the Small Business Innovation Research Program Reauthorization Act of 1992.

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

ADDITIONAL STATEMENTS

H.R. 3486—THE MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

• Mr. LAUTENBERG. Mr. President, I rise today to support H.R. 3486, the Marine Mammal Health and Stranding Response Act. This bill would amend the Marine Mammal Protection Act of 1972, to establish a program for responding to unusual marine mammal mortality events and to provide guidance and quality control for marine mammal tissue banking and analysis. The effective coordination of stranding responses will help save marine mammal and standardized tissue sampling and analysis will help determine the cause of marine mammals strandings and possibly prevent them. This bill is the companion bill to S. 1898, which I introduced last year.

H.R. 3486 responds to the serious incidences of marine mammal strandings. In 1987 and 1988 we witnessed a die-off of bottlenose dolphins and strandings of these animals on the shores of my State of New Jersey and other east coast States. The sight of dead and sick marine mammals on our shores was heart wrenching. It made many wonder why these beautiful creatures died and if this mysterious affliction would threaten other marine life and even beachgoers. Studies of the marine mammal tissue from these stranded marine mammals showed high levels of toxic contaminants. These contaminants may have played a role in weakening the immune system of these marine mammals and made them susceptible to illness which led to their stranding. No conclusions could be drawn from these studies because we did not have an adequate baseline to compare contaminant levels found in the tissues of these stranded marine mammals.

H.R. 3486 will address this problem by establishing a marine mammal tissue bank. While always tragic, strandings and unusual mortality events can be used as learning tools to diagnose the health of the marine mammal populations. If the marine mammal is still alive or recently dead, tissues can be collected for analysis. Tissue analysis may lead to a diagnosis of the problems which lead to the marine mammal strandings. It is not enough, however, to just ensure tissues are collected. Since the start of the stranding networks, tissues have been collected. Individual participants, however, have used various methods of collection, preparation, storage and examination of these tissues. H.R. 3486 will require NOAA to issue recommended guidelines for collection, preparation and tissue analysis techniques. Thus data from one stranding event can be compared to data from another event, and all these can be referenced to standard

samples taken from healthy marine mammals.

The 1987–88 Atlantic bottlenose dolphin die-off and the *Exxon Valdez* oil spill of 1989 showed that responses to unexpected events affecting marine mammals that cause at least partial die-offs of marine mammal populations have been uncoordinated. H.R. 3486 calls for a more effective response to unusual mortality events. It will accomplish this by having NOAA establish a scientific working group that will: First, determine when an unusual mortality event is occurring; second, determine the point at which an unusual mortality event is concluded; third, develop a contingency plan which allows for a coordinated response to an event; and fourth, identify individuals or organizations that can assist NOAA in a coordinated and effective response. Contingency plans will permit the coordination of efforts so as to most effectively use scarce resources, maximize the chances for identifying causes of unusual mortality events, and improve efforts to save the marine mammals once stranded.

I want to thank Senator HOLLINGS and the Commerce Committee for their efforts in considering this legislation.

Mr. President, I believe H.R. 3486 will strengthen efforts to protect the health of this Nation's magnificent marine mammals. This bill has received the support of the administration and the environmental community. I urge my colleagues to support H.R. 3486.•

TRIBUTE TO DR. JONATHAN R. JAVORS

• Mr. COATS. Mr. President, there are few issues more important to the people of Indiana today than health reform. I would like to commend Dr. Jonathan R. Javors, D.O., a private orthopaedic surgeon from Schererville, IN, for contributing to this important debate with a reform proposal rooted in wellness and prevention.

Dr. Javors has published and distributed his health care proposal entitled, "Health Care * * * A New Beginning," to more than 2,000 national leaders, including President Bush and his Cabinet, Members of Congress, the Nation's 50 Governors, and Fortune 500 chief executive officers.

Reflecting his concern as a physician and the fact that skyrocketing health care costs are sapping our Nation's productivity and ability to compete in world markets, Dr. Javors has two objectives in mind in distributing his proposal. The first is to reorient the health care system toward wellness and prevention—specifically, proper fitness, nutrition, and stress control combined with testing and treatment to attack illness before it occurs. The second is to reform the present system by seeking significant savings by eliminating overtesting and overuse of services, changing tort laws to decrease defensive medicine, and other measures.

For example, he estimates that out of the current $800 billion spent on health care, over $300 billion could be saved and then reinvested to provide access to health care for Americans.

By his own words, Dr. Javors would rather help people stay healthy than treat problems after disease occurs. As medical director of the Centers for Health Excellence, Dr. Javors is promoting wellness with his patients and providing scholarships to deserving high school students in Lake County through his ongoing Sports Medicine Center Foundation.

For his initiative, courage, and commitment to changing the health care system by reorienting it toward wellness and prevention while personally demonstrating a wellness ethic in his practice and community, Dr. Javors is demonstrating the highest standards of excellence as a physician and an emerging leader in the health care reform movement. I speak for all the people of northwest Indiana when I say thanks for his valuable contribution.•

TAILHOOK, THE RIGHTS OF WOMEN, AND THE HONOR OF THE NAVY

• Mr. MCCAIN. Mr. President, nearly a year ago, on October 29, 1991, I was the first Member of this body to stand up on this floor, and demand a full investigation of the molestation and abuse of women at the 1991 Tailhook convention. At that point, all I knew was that something was terribly wrong. Incidents had occurred at the convention, which took place in Las Vegas on September 8, 1991, that harmed a number of women and threatened to dishonor the Navy.

At that time, I called for the Secretary of the Navy to commence an independent investigation to ensure the most complete and credible review. I stated that we must adopt a zero tolerance approach to harassment and sexual violence of any kind, and I called for suspension of the Navy's participation in the Tailhook reunion.

The months that have followed have often been grim. They have revealed that incidents did take place at Tailhook that could never have been condoned at any time in our military history. They have revealed deep flaws in the Navy's efforts to prevent such incidents, in the Navy's initial handling of the incident, and in the Navy's conduct of the investigation once it took place.

Hopefully, Mr. President, we have begun to put an end to all of these problems today. We are showing that we have corrected the weaknesses in the initial investigation of Tailhook, we are showing that we will not tolerate abuse or the cover up of abuse, and we are sending a very clear message that our policies relating to sexual harassment have very sharp and determined teeth.

I believe that Derek J. Vander Schaaf, the inspector general of the Department of Defense should be praised for his forthright investigation. He has uncovered a sad story, but one that needed to be told and one that everyone in the Navy should read. Justice must be done, and no one can condone a single failure to ensure that it is done.

I believe that Secretary O' Keefe deserves equal praise for acting quickly and decisively on the content of the inspector general's report. I regret that such steps have become necessary, but the Secretary is clearly committed to the right course of action, and I strongly support him in every respect.

I also believe that Admiral Kelso deserves praise for his strong and continuing effort to deal with this issue. He has shown consistent leadership in communicating the fact there is no place in today's Navy, or in any organization that claims to support the Navy, for a single man who feels that sexual harassment or abuse can be tolerated or is somehow a legitimate subject of ridicule.

It is my hope that we will put an end to this tragedy in December, when the investigations of the individual cases of abuse at Tailhook are complete. It is my hope that we will take every necessary action to ensure that every man in every service who crossed the line, either in participating in the abuses at Tailhook or in covering them up, receives whatever penalties apply.

It is also my firm belief that we will then be able to put Tailhook in perspective. That bad as the abuses at Tailhook were, they involved a small fraction of the thousands of men at Tailhook, and a small fraction of the Navy.

Mr. President, let me close with a personal message to all of those who served or have served in the Navy, and in the service to which my family has given three generations.

Every man on active duty and in the Reserves, and every retired naval officer and enlisted man, must accept and act upon Admiral Kelso's message that women are partners and equals. I am firmly in support of that policy, and I am committed to supporting it in every way I can.

Tailhook will never truly be over until you help end it. The U.S. Navy is an honorable profession. It has served our country and the cause of freedom on countless occasions. All Americans share a common pride in its achievements, and incidents like this can never again be allowed to stain its reputation.

We all must rededicate ourselves to ensuring that the honor of the Navy is

firmly based on equal respect for all who serve. Women do not need to prove their right to that respect. They have already proved it time and again. It is we, as men, who need to prove that we recognize that right and are dedicated to showing that respect.●

MINORITY SMALL BUSINESS AWARDEE

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to Joseph C. Lu who has been selected to receive the Minority Small Business Association's Small Business Person of the Year Award.

Joseph C. Lu [JCL] Engineers is a professional corporation providing consulting engineering services. They are dedicated to providing practical and responsive services. The firm consists of consultants who serve as a source of information relating to engineering problems, approaches, and solutions. JCL covers an entire range of services including construction, cost and budget analysis, design, facility evaluation, planning, program development, and regulatory coordination and compliance.

Joseph C. Lu received his bachelors degree in civil engineering from the University of Taiwan and his masters degree in environmental engineering from the University of Missouri. Prior to organizing his own consulting firm, Mr. Lu was manager of the process division for a large consulting firm in upstate New York. There he planned and supervised the design of municipal and industrial waste treatment and water supply systems.

Mr. Lu has designed water supply treatment, storage, and distribution systems for both municipal and industrial users, and has conducted water supply evaluation and modification studies for major cities. He has also performed water resource planning studies and assisted in water resource planning studies and assisted in water district formations.

Mr. Lu has had extensive liaison experience between regulatory bodies and local governments during the planning and development of environmental related projects. In performing this critical function he has provided assistance in fiscal planning, applications for grants-in-aid, grant administration, and technical design required for approval by State and Federal environmental agencies.

Mr. Lu brings to his projects an unusually broad perspective. His varied cultural and professional experience has resulted in a unique ability to focus efforts toward mutual goals and to bring disparate viewpoints into accord. His technical expertise is balanced with his superior management skills which has led the Minority Small Business Association to bestow its most distinguished award upon him this month. Mr. President, I ask my colleagues to join me in applauding the superior efforts of Joseph C. Lu. I wish Mr. Lu warm congratulations and many more successes.●

ORDERS FOR TOMORROW

Mr. BENTSEN. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9 a.m. Friday, September 25; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that immediately thereafter, the Chair announce that the Senate resume consideration of H.R. 11, the urban aid package; that once the bill is reported, Senator Smith be recognized to offer his amendment, which is to be considered under the parameters of a previous unanimous-consent agreement.

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

Mr. BENTSEN. Mr. President, I suggest the absence of a quroum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 9 A.M. TOMORROW

Mr. JOHNSTON. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 11:08 p.m., recessed until Friday, September 25, 1992, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 24, 1992:

THE JUDICIARY

GEORGE A. O'TOOLE, JR., OF MASSACHUSETTS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS VICE DAVID SUTHERLAND NELSON, RETIRED.

COMMUNICATIONS SATELLITE CORPORATION

BARRY M. GOLDWATER, SR., OF ARIZONA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF ANNUAL MEETING OF THE CORPORATION IN 1995. (REAPPOINTMENT)

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

RANDALL BROOKS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMISSION ON NATIONAL AND COMMUNITY SERVICE FOR THE REMAINDER OF THE TERM EXPIRING AUGUST 4, 1994, VICE JOYCE M. BLACK.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

LT. GEN. HENRY VICCELLIO, JR., XXX-XX-XXXX U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JAMES T. CALLAGHAN, XXX-XX-XXXX U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. JOSEPH W. ASHY, XXX-XX-XXXX U.S. AIR FORCE.

WITHDRAWAL

Executive message transmitted by the President to the Senate on September 24, 1992, withdrawing from further Senate consideration the following nomination:

DEPARTMENT OF STATE

JOSEPH GERARD SULLIVAN, OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NICARAGUA, WHICH WAS SENT TO THE SENATE ON FEBRUARY 27, 1992.